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ONTARIO
ADVISORY COMMITTEE
ON
CONFEDERATION



BACKGROUND PAPERS & REPORTS

VOLUME 2

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BRIEF NOTES ON THE PAPERS

These notes are not intended to summarize the content of each paper, but are an attempt to provide a guide to the area covered.

Volume II

J.

THE MODERN FEDERATION -
SOME TRENDS AND PROBLEMS
by Alexander Brady, April, 1966.

In this major paper Professor Brady analyzes the changes in the Canadian federation since 1945 and the present problems which confront us. These problems can be traced to various sources, but one of the major problems is a fresh strong French-Canadian nationalism. He concludes that an understanding of the subtlety and complexity of the French fact on the part of English-speaking leaders is more urgent than a new constitution. Furthermore, he feels that such understanding will establish a renewed partnership with French Canadians and thus add to the substance of Canadian federation.

K.

THE PROPOSAL OF A FEDERAL CAPITAL TERRITORY
FOR CANADA'S CAPITAL,
by D.C. Rowat, September, 1966.

Many of the briefs to the Royal Commission on Bilingualism and Biculturalism advocated the creation of a federal district

in which the bilingual-bicultural character of Canada would be symbolically reflected. As a result, the Committee decided to commission Professor D.C. Rowat of Carleton University to prepare a study for them on this question. Professor Rowat submitted his report to the Committee in September, 1966. The knowledge of the existence of such a report stimulated a great deal of further discussion and research on the problems of a capital district by the federal and Quebec governments and by citizens' groups in the Ottawa-Hull area.

Professor Rowat's report is a broadly based study in which the question of a federal district is approached from the point of view of three objectives:

- (a) The effective implementation of the national capital plan; that is, a desirable development of the community through such means as a comprehensive zoning law and the establishment of a so-called green belt and reform of local administration.
- (b) Development of Ottawa and Hull as an area symbolic of the nation rather than as mere regional centres in Ontario and Quebec.
- (c) The creation of a truly bilingual environment in the Ottawa area which would make the capital an attractive place for French Canadians to work.

The report concludes that these objectives could be met by means of greater co-operation among the Ontario, Quebec, and federal governments. Since this co-operation cannot be assured, Professor Rowat feels that these objectives would more likely be achieved by the creation of a federal capital territory.

L. THE NATURE AND PROBLEMS OF A BILL OF RIGHTS,
by W.R. Lederman, November, 1966.

Dean Lederman's deceptively simple thesis is that the demand for a Bill of Rights simple reflects the "age-old demand of citizens for justice". He concludes that the best constitutional guarantees of justice are those that "safeguard the democratic character of our legislative bodies, the high quality and independence of the courts, and the fairness of procedure in both".

M. THE PROVINCES AND THE PROTECTION OF
CIVIL LIBERTIES IN CANADA: THE PROVINCE OF QUEBEC,
by Edward McWhinney, February, 1967.

Many of the proposals advocating changes in the Canadian federal system have included suggestions for entrenching a Bill of Rights in the Constitution. This suggestion appears to have a great deal of support among a wide spectrum of reformers in the Province of Quebec. During the Quebec provincial election of 1966, both the major political parties included civil rights planks in their platforms.

Professor McWhinney's paper sets out the past position of civil liberties in Quebec and reviews the important changes that have occurred in the years of the Quiet Revolution. The paper illustrates the improvements that have been made as well as showing the areas in which progress is still required.

N. PROPOSALS FOR AN
ONTARIO CULTURAL AND EDUCATIONAL EXCHANGE PROGRAMME
AND AN
ONTARIO-QUEBEC CULTURAL AND EDUCATIONAL EXCHANGE AGREEMENT,
by T.H.B. Symons, July, 1965.

"There is an acute need for more and better communication between French- and English-speaking Canadians, and there is widespread agreement that a great deal could be done to achieve this improved communication through a programme of cultural and educational exchanges sponsored by the Province of Ontario."

Professor Symons' main recommendation is that the Province of Ontario ought to establish an extensive and sustained programme of cultural and educational exchanges between Ontario and Quebec and within Ontario. It was Professor Symons' paper which ultimately led to the establishment of the Ontario Cultural and Educational Exchange Program.

O. REPORT OF AN ONTARIO POSITION IN FEDERAL-
PROVINCIAL FINANCIAL RELATIONS,
by the Economic and Fiscal Sub-Committee, April 24, 1966.

With the approach of the quinquennial negotiation of federal-provincial financial arrangements, the government asked the Committee to make recommendations as to the stand that the Ontario Government should take on federal-provincial tax-sharing and cost-sharing arrangements and equalization payments.

The Modern Federation
Some Trends and Problems

by Professor Alexander Brady

April, 1967
(Revised version of a
paper prepared in 1966.)



The Modern Federation
Some Trends and Problems

Since 1945 the Canadian federation has undergone more constant and profound change than in any two decades of its history. Its present problems are derived from varied political and social forces generated largely by the Second World War and its aftermath: industrialization quickened by war and technology, the accelerated rate of population growth, the enlargement of urban communities, the wider acceptance of the positive state in economic life, the rapid exploitation of natural resources throughout the provinces, and the dynamism of a fresh and potent French-Canadian nationalism.

The Federal Pendulum 1945-1966

The most conspicuous Canadian fact in the last twenty-one years has been a swing in the pendulum of federal power in response to economic, social and political forces. An immediate effect of the Second World War was to magnify the ambition and multiply the tasks of the national government in achieving economic stability and social welfare. The wartime leaders in Ottawa acquired and exercised decisive power in marshalling human and material resources for national survival. Their authority then resembled that of rulers in a unitary state. Without ignoring the fact of federalism, they were less obligated than in peacetime to accept its restraints. They could promptly match plans with revenue, for in the emergency they leaped over obstacles that hitherto had hampered federal ministers. In 1941, the national government acquired with provincial consent

the exclusive right to impose the lucrative personal and corporate income taxes as if, in the words of Finance Minister Ilsley, "the provinces were not in these fields".

It was doubtless inevitable that leaders who had successfully geared a government for national goals in war should also desire to gear it for national goals in peace. The current climate of opinion encouraged them. Everywhere in the western world the concept of national economic planning was in the air. Keynesian ideas on contracyclical budgets appealed to practical policy-makers seeking economic stability. New visions of social welfare under the state were prevalent. The bureaucracy fashioned in wartime Ottawa perceived that rising productivity elevated the standard of living and increased the capacity of the public to pay for welfare measures. It diligently worked out plans to distribute throughout the country, under federal direction, the expected increments of income. Likewise, pressures from a host of interest groups of many kinds further the same end. Federal politicians quickly appreciated the electoral advantages of employing the national treasury to satisfy the new and avid appetites for welfare services. Aware that federalism imposed restraints on what parliament at Ottawa could accomplish, they hoped nevertheless to establish themselves a more active role in economic and social policy. Even before the end of the war (in 1944) they initiated family allowances, the boldest and most costly welfare venture hitherto attempted in Canada. Soon they were sponsoring a proliferation of federal conditional

grants and shared-cost programmes to further national standards and circumvent the limits on federal legislative powers. These new projects involved the expansion of federal activity into areas of exclusive provincial jurisdiction, such as natural resources, social welfare, local government, highway construction, and education.

The vigorous post-war initiative of the national government, although at first encouraged by the less affluent provinces, soon came under provincial challenge. The attempt of the government after 1945 to operate a renewable rental system for the basic taxes on personal income, corporations, and inheritance failed to achieve a satisfactory fiscal equilibrium. Quebec repudiated the rental device. Up to 1952 Ontario did likewise, eventually accepted it as a stop-gap in the case of the personal income tax, but remained convinced that it was too inflexible for a time of peace and dynamic change. Whenever the agreements came up for renewal, all provinces out of hard necessity eagerly contended for higher payments from the federal treasury. Rapid provincial development and population growth made rental arrangements unstable. Under the compulsions of an industrial society, the provinces were driven to ever greater expenditures on the many services for which under the British North America Act they were accountable. They needed augmented revenues to meet the soaring costs of education at different levels, the medley of health and welfare expenditures in the burgeoning metropolitan areas, the constant demand for highways and more highways, and the urgent requests for projects of

conservation and water control. It now seems ironic that some fathers of Confederation had viewed provincial powers as relatively unimportant. On one occasion at the Quebec Conference, George Brown had referred to them as insignificant. They may have been intended to be insignificant in the days of the horse and buggy, but with the advent of a progressive industrial society they loomed into conspicuous importance, necessitating ever larger sums of money to finance.

In a period of remarkable economic change, the post-war tax agreements between the provinces and the national government could never be more than temporary expedients, unsatisfactory after negotiation, or even when negotiated. They constantly generated federal-provincial tensions over details of interim arrangements, with the provinces always demanding larger revenues to meet expanding services.

The recurrent financial difficulties of the provinces can be met in three principal ways:

- (i) by transfer payments in some form of grant from the federal treasury;
- (ii) by the national government yielding to the provinces more of the direct tax fields open to them under the constitution;
- (iii) by the shift of certain costly provincial functions to the national parliament either through constitutional amendment or through some form of dominion-provincial agreement.

Among these measures, constitutional amendments are particularly difficult to achieve. Barring such a catastrophe as

a third world war, the major provinces would seldom freely surrender a significant part of their jurisdiction, least of all a control over natural resources. Even if persuaded to do so, it is questionable whether the provinces would actually further the national interest by transferring any of their important functions to the federal parliament and executive. Canada is one of the largest countries in the world. Its exploitable resources are heterogeneous and dispersed over vast territories and its provinces possess different environments and social situations. Geographic and economic diversification make it singularly fitted for federal rule, because only federalism appears practicable. Not by historical accident has substantial legislative power come to rest in the provincial legislatures. This regime is justified by its results: provincial ministers and their officials are reasonably close to the people served, close enough at least to understand the variety of physical and social circumstances under which citizens live. At the same time, most provinces are not so small as to involve an excessive and needless diffusion of administrative and political power.

Canadians are often tempted to seek examples from American federalism, where in late years strong centripetal tendencies are manifest. But there are profound differences between the two federations. Ten provinces exist in Canada against fifty states in the neighbouring republic, and two of the provinces, Ontario and Quebec, contain more than 60 per cent of Canada's population and an equally high proportion of its wealth and economic power. These major jurisdictions inevitably

acquire a potent bargaining power in all federal-provincial relations. Their leaders exert an influence over a significant portion of the Canadian electorate, and a government in Ottawa is sensitive on how such influence is employed. Six of the ten provinces contain land areas exceeding in each case 200,000 square miles, large by the standards of many independent and influential national states and larger than any states in the American union except Texas and Alaska. Their sheer size helps to foster a powerful sense of local interest and attitude. Ontario, for example, is larger than the Federal Republic of West Germany on the one hand and Italy on the other. It has substantially more square miles than Texas and is twice the size of California. A medley of economic interests within its extensive territory comes to be connected with its political and administrative system and readily defends the federal regime. A like situation is found in other large provinces. Area, of course, is merely one among many relevant factors in assessing the degree of autonomy appropriate for a junior government. Population and its density are others. But area is particularly important in communities growing rapidly in numbers and exploiting widely dispersed resources. A major shift in legislative power from the provinces to the national parliament would raise the spectre of an elephantine bureaucracy in Ottawa, remote from much of the country, tolerable perhaps in war, but intolerable in peace. Centralization might also impose additional and severe strains on the national party system and add to the difficulty of obtaining in parliament an appropriate consent for policies

that will satisfy the diverse regions of the country.

Here no attempt is made to examine taxes and grants except in their broadest implications for federal institutions. In the Canadian, as in other modern federations, financial procedures must be periodically appraised in terms of a changing society and the ethos of the system. The venerable doctrine is still valid that governments act more responsibly if compelled to raise the money they spend. The closer the adherence to this principle the better. But, unfortunately, modern federal states can seldom rely wholly on traditional taxes for a fair distribution of revenues. Tax resources and functional responsibilities can rarely be apportioned with such nice precision that each of the federated units is financially independent. In Canada an almost chronic maladjustment has existed between functions and revenues, and grants or transfer payments from the national treasury have been a fiscal and political necessity. They have constituted an essential part of the mechanism to satisfy needs, reduce tensions, and further agreements. Without them the federation might not have survived. The important question for the future concerns the forms they should assume.

An argument for transfer payments now seldom disputed in principle is their use in ameliorating the special economic disabilities of certain provinces. The provinces are born to inequality, and the underprivileged resent the fact. Some have abundant resources strategically situated for development and some few; some are consequently affluent and some poor; some benefit generously from private investment and advancing

industrialism and some little. In 1926 the average income per capita in the three Maritime Provinces was 38 per cent below the average for the other six. Thirty years later the Gordon Royal Commission found that the situation had not substantially altered.¹ Recent evidence suggests some reduction in the gap, but it is still real.

Disparity in wealth means differences in revenue-raising or fiscal ability and hence in the quality of public services. The federal government has commonly tried to mitigate inequalities through payments from the national treasury and concessions in freight rates and tariff arrangements. Recent expedients of this kind are the special adjustment grants to the Atlantic Provinces and the payments to equalize tax returns per head from the three standard taxes on which the tax-split is based. Thus, by an appropriate formula, an attempt is made to equalize the revenue per head of those provinces with large geographic concentrations of industrial and personal wealth and those without. The formula is difficult to devise in a way that will entirely extinguish complaints. Ontario, which is always a donor and not a recipient, has sometimes complained that the methods applied were unfair in failing to recognize her special needs due to industrial concentration and rapid municipal growth.

Whatever the technical difficulties involved in equalizing tax revenues, the principle of aiding the indigent at the expense of the affluent in the name of equity and in the interest of national unity now seems permanently lodged in the federal structure. It has undoubtedly helped to reduce

discontent within the federation. Mr. Joseph Smallwood, representing the province with the lowest personal income per capita, extolled equalization as "an essential feature of the Terms of Union of Newfoundland with Canada in 1948. Newfoundland could not even survive without the continuation of equalization".² Mr. Roblin of Manitoba remarked that the less wealthy provinces view the system of equalization and stabilization as "a lifeline in the equality of Canadian citizenship in services". In the dominion-provincial conference of 1963, Mr. Pearson added his tribute: "The concept of equalization is necessary to co-operative federalism. Without that concept some of the provinces could not adequately discharge their responsibilities." The most successful result of the meetings of the Tax Structure Committee in 1966, which failed to achieve many of their other purposes, was the establishment of a new system of equalization payments to come into effect on April 1, 1967. The new equalization formula takes into account all provincial revenues at average provincial rates and will bring the revenue yield in all provinces up to the national average yield. A marked advantage of the new system is that it will perform automatically and thus relieve some of the pressures for changes in the formula at every new discussion of federal-provincial relations.

The case for a periodic review in any system of conditional grants is forcibly illustrated by the experience of the programmes since 1945. Before the Second World War a limited number of such grants were given in agricultural

instruction, highways, technical education and old age pensions. But during the war and especially on its conclusion, their number and variety multiplied. By December, 1962, 56 of these programmes existed.³ Economic development and standards in health and welfare were promoted, either by a gift of federal funds alone, or by federal funds matched by provincial contributions. By this means, the government in Ottawa hoped to further national purposes within the sphere of provincial jurisdiction, prod tardy provinces into action, and assist all of them to cope with a plethora of functions and a paucity of revenue. From one point of view the conditional grant programmes achieved initial success. Notably, they helped to secure for the poorer provinces extra money, skilful leadership, and technical guidance, permitting them either to begin services that unaided and aloof they could not provide, or enlarge the volume of an existing service not otherwise possible. In these instances, the grants were an invaluable instrument in the early stages of public health and welfare development.

Despite their benefits, the proliferation of conditional grants since 1945 appeared to justify some of the unheeded warnings of the Rowell-Sirois Commission on their dangers and inherent defects in a federal system.⁴ They imply a division of administrative responsibility, with its customary faults of expense, delays, frictions, cumbersomeness, and confusion. Moreover they fail to contribute explicitly to that strict sense of accountability for policies which provincial governments should cultivate and without which their formal autonomy is

meaningless. Although they make possible some useful advances in policy, they often fail to foster in the provinces a genuine political responsibility for what is done. In many cases expert officers from federal departments give an enlightened leadership. Yet relevant is Mr. R. B. Bryce's reminder that such leadership comes "from sources other than those constitutionally responsible for the services, which really means that those who are constitutionally responsible are not in fact making the basic decisions - they are allowing themselves to be led".⁵ The national government often launched conditional grants with little or no prior consultation with the provinces, or consulted them only after it had already assumed a firm position from which it was indisposed to retreat. In either case it exerted a measure of coercion over provincial action. However strongly a province may wish to channel funds into primary education or other services of its own selection, it finds that a refusal to participate in a federal programme is difficult, because its electors are prone to think that a refusal deprives them of something to which they are entitled. Here is a special type of political pressure exceedingly hard to resist. Quebec in its jealousy for autonomy and suspicion of Ottawa could afford to refuse federal proposals, but even Mr. Duplessis in his long and firm grip on office did not always spurn them. He saw the expediency of accepting some. For the leaders of other provinces it usually seemed political folly to reject them outright. Once established the grant programmes were sometimes difficult to terminate because a corps of vested interests developed in their defence.

From the middle of the 1950's, the growing strains on their budgets made provincial premiers more dissatisfied than hitherto with certain details of the conditional-grant system. No less urgently than ever they wanted money from Ottawa, but not on the inflexible terms prescribed by conditional grants. In 1955 the Premier of Manitoba bluntly asserted:

"It is easy to visualize the disruptive effect on a provincial budget which results from the unexpected announcement of a Federal programme involving major expenditure by the province. While it is a fact that in each case the province is free to elect not to participate in such a programme, experience has demonstrated that it is both difficult and embarrassing for a provincial government to refuse to join...regardless of the resultant budgetary difficulties. In practical effect any such action on the part of the Federal Government diminishes the control of the province over its own budget."⁶

As the conditional grants for hospital insurance and welfare grew larger, they assumed a bigger place in provincial revenues, and hence provoked greater concern in provincial government, which were also now deeply involved in long-term plans of economic development. This concern was forcibly expressed in the federal-provincial conference of 1960. New Brunswick, Manitoba, and Prince Edward Island denounced the inequities of the system. They complained that, when a programme required matching grants, it not merely made provincial budgets less flexible but operated unjustly, because every province whatever its capacity to pay must meet the same percentage of the cost. Hence some conditional-grant programmes imposed a financial handicap on the poorer provinces at a time when they could least afford it. Premiers Frost, Manning, and Lesage were equally critical on somewhat broader grounds. They condemned them

in particular for blurring the lines of jurisdiction and responsibility between provincial and federal governments. For Mr. Frost, the conditional grants whetted the appetite of the provinces for funds from the national treasury and thus diverted them from a proper concentration on plans for augmenting their own revenue. Mr. Manning deplored the fact that, in deciding to co-operate in a joint programme proposed by the federal authority, the provinces were not really exercising their full legislative rights and initiative, although the subject might be within their jurisdiction. They were merely asked to participate in something already determined upon by federal ministers. Like Mr. Frost, he doubted that this constituted in any real sense provincial self-government. The whole trend towards these programmes, he thought, "should be progressively reversed and the funds involved diverted more and more into the field of unconditional fiscal aid." Mr. Lesage expressed other variants of the same theme. He considered that the main programmes were now sufficiently well established to permit the federal government to withdraw from them entirely and compensate the provinces for the extra financial responsibilities in carrying them along. Compensation should take the form of additional taxation rights reserved for the provinces with corresponding equalization payments. From this he envisaged the happy result that each province could then employ its revenues as it saw fit within its sphere of jurisdiction.

This rising volume of provincial criticism of conditional grants inevitably influenced the thought and practice of national leaders. Mr. Pearson (when still in opposition)

in November, 1961 expressed the view that the federal government should not contribute to such programmes after they were well established, that the provinces should be helped with tax concessions to maintain them from their own resources, and that provinces anxious to remain outside shared-cost programmes should be able to do so without financial discrimination. These views clearly conformed with those earlier expressed by provincial premiers and notably by Mr. Lesage. They were the basis for new policies introduced by Mr. Pearson's government after 1963.

The federal government's revised plan for conditional grants recognized the complexity of the subject and proposed an interim scheme, to be followed after 1967 by a further review. The transitional changes were announced on September 10, 1964, in a letter to all provinces and embodied in a statute six months later. They divided the programmes into three broad categories with a distinct treatment for each.

- (i) The first group included grants for various types of research and training, the centenary works, emergencies, and five important forms of capital investment, namely, the Trans Canada highway, railway grade crossings, vocational school construction, Agricultural Rehabilitation and Development (ARDA), and municipal works. These would all operate as in the past, but were of limited duration.
- (ii) Various agriculture and forestry grants together

with those for hospital construction, camp grounds and picnic areas, and roads to resources permit opting out on the basis of federal cash compensation and a provincial undertaking to sustain the programmes for an interim period.

- (iii) In the case of shared-cost programmes in certain other fields, including hospital insurance, old age assistance, and allowances for the blind and disabled, opting out is made possible on the basis of a federal tax withdrawal.

Quebec promptly accepted the federal government's proposals for contracting out, whereas other provinces decided to await at least the recommendations of the federal-provincial Tax Structure Committee, then reviewing conditional grants and allied matters. In the meantime, through an extensive use of the contracting-out formula, Quebec acquired greater tax abatements for income and succession duties than any other province. At the same time, it insisted on unconditional fiscal equivalence, namely, the tax power acquired through opting out was not to be restricted by conditions on the use of the revenue.

In 1966, the federal government's position on opting out and conditional grants underwent a profound change. The Minister of Finance and several members of the government party in the House of Commons were successful in having the view adopted by the government that a continuance of the situation whereby Quebec was the only province to opt out of shared-cost

programmes was a danger to Canadian federalism. They argued, doubtless with some reason, that the establishment of a de facto special status for Quebec would lead eventually to the position of an associate state, performing public functions executed in other provinces by federal departments and agencies. To reverse such a tendency and preserve federalism, they laid down the principle that there should be "uniform intergovernmental arrangements and the uniform application of federal laws in all provinces".

At the meetings of the Tax Structure Committee in the autumn of 1966, the federal government, in return for the assumption by the provinces of full financial responsibility for hospital insurance, the Canada Assistance Plan, and the continuing portion of health grants, offered the provinces 17 points of the individual income tax with associated equalization and an adjustment payment or a special programme equalization grant, which would bring each province's annual compensation up to the amount it would receive under the shared-cost agreements involved. Under this offer, the provinces would have the option in 1970 of remaining bound by the shared-cost conditions for another two years, or having their adjustment payment or programme equalization grant increased.

Despite strong urging by the federal government, none of the English-speaking provinces accepted the offer. Some provinces, including Ontario, declared that they would reconsider their refusal when the federal-provincial financial arrangements were reviewed in two years. Other provinces emphasized that shared-cost programmes represented a useful

method of ensuring federal-provincial consultation and more uniform standards of services across the country and that to abandon them would be a mistake. Nevertheless, the federal government was explicit that it would adhere to its general position, would refrain from entering provincial fields of jurisdictions, and would not renew the major shared-cost agreements when they reached their termination dates. It was evidently resolved to bring the federation closer to the principle that when a government wants to spend, it must be prepared to raise the money.

The story of federation since 1945 is the story of a growing complexity and a growing interdependence among the units of the federation. The federal and provincial governments in their respective jurisdictions are all anxious for freedom of manoeuvre, for all are eager to respond to the pressures of electors. But full freedom of manoeuvre in the present federation is a will-of-the-wisp. Today a workable federalism means a co-operative federalism. With a growing interdependence between the regional parts of the national economy, every major act of a single government involving expenditure is likely to have implications for the others. New forms and fresh ideas in the arts of collaboration will need to be constantly explored and applied. But behind all that must be a determination to make the federation work by accepting the elemental fact of interdependence.

Quebec and Confederation

From the outset, Quebec exerted a significant influence on the federal system and will continue to do so. Its position and its relation to the rest of the country is of paramount importance in any review of the contemporary federation.

Quebec always differed from other provinces. Its special character was evident among other things in civil law, the role of the Roman Catholic church in education, health and welfare, the traditional customs that for generations had accumulated in the countryside, and the tight social integration of the French parish. Some provisions in the B.N.A. Act recognized the distinctness of the province. Section 94, for example, contemplated that with provincial consent laws relating to property and civil rights should in all provinces except Quebec be unified by the national parliament, thus in effect giving a special protection to the French law of property and civil rights.

In 1960 Quebec's distinctiveness entered a new phase. The electoral victory of the Liberals in that year was followed by something more than another variant of traditional French-Canadian nationalism, with its constant emphasis on cultural survival. A far-reaching programme of reform and development was designed to augment the activities of the Quebec government, carve out a large new public sector in the economy, accelerate the exploitation of provincial natural resources, encourage new industries under French-Canadian control, increase and diversify employment, establish hospital insurance and welfare services,

make strides in promoting educational reform, and generally quicken the rhythms of social change. Hitherto Quebec more than Ontario had depended on industries with a low level of wages and a high level of protection. The government was determined to alter this, to invigorate stagnant parts of the economy, to quicken mobility in the labour force and to diminish the pronounced regional disparities in income that hitherto had existed. The implementing of these plans necessitated institutions and devices new for the province, such as the public ownership of electricity, the General Investment Corporation, the Deposit and Investment Fund, the Mining Exploration Corporation, the steel complex of Sidbec, and the recruitment of a new and vigorous civil service.

The replacement of private by public ownership of hydro power was intended to create a power grid across the province as a firm base for economic development and a tool for returning to the Quebec people the benefit of their natural resources. A similar role was intended for other public agencies.

It would be a simplification to assume that these far-ranging plans were merely the product of an insurgent nationalism, but certainly they were influenced by it. Although we find many policies of development like those in other large provinces, they were launched with a special emotional support and designed to give a new prestige to French Canadians. Leaders were confident that in their Quebec stronghold the French must reduce their former economic backwardness, rehabilitate their community, and assert their distinctiveness as a people in control

of their destiny. "We are not defending the autonomy of the province", said Mr. Lesage at the federal-provincial conference of 1963, "simply because it is a question of a principle, but rather because autonomy is to us the basic condition, not of our survival which is assumed from now on, but of our assertion as a people".⁷ Apart from rhetoric, this feeling is expressed in mundane practices. It is characteristic that the Quebec Hydro, in seeking to satisfy its mechanical requirements for expansion, introduced a fixed preference for local producers over competitors from outside the province, a practice now widely followed by other public agencies. The apparent indifference of the Quebecers to the rest of Canada's economy was derived from an absorbing concern with their own problems and society.

The new political energy in Quebec had immediate consequences for Canadian federalism, although the major actions of Mr. Lesage's government, like those of other provincial governments, were confined to the area of its competence under the British North America Act. In federal-provincial relations it had two major objectives: to secure from the government in Ottawa a larger share of the direct tax field, and to reduce and ultimately eliminate joint-cost programmes as an improper intrusion on provincial jurisdiction and an impediment to effective economic planning. In these policies it aimed to preserve its financial independence and legislative and administrative autonomy. In the first, Quebec's position was scarcely different from that of Ontario, whose constant theme in federal-provincial conferences

since 1955 has been the urgent need for enlarging the tax resources of the provinces, which now have to meet heavier expenditures. "The present tax rates of the provinces", complained Mr. Frost in the federal-provincial conference of 1955, "are far out of line with their needs. At the present time the personal income tax credit allowed in the province of Quebec is only one-ninth of the Federal Government's revenue from this field, while in the province of Ontario the rental we are presently receiving for personal income tax is based upon only one-nineteenth of the Federal Government's take from this field."⁸ In subsequent years the apparent inequity of this situation, in view of provincial necessities, was repeatedly emphasized by Ontario, and after 1960 was reinforced by the pleas of Mr. Lesage.

To conditional grants and shared-cost programmes Quebec's opposition was usually implacable, and through the years its arguments varied little. Its case was elaborated in the Tremblay Report of 1956, where conditional grants were condemned as insidious forms of centralization, undermining provincial autonomy. Mr. Lesage's government inherited these views, although at first it accepted some grants previously rejected by Mr. Duplessis. But on formulating and maturing its economic ideas, the government became increasingly impatient with federal policies, embracing conditional or unconditional grants, that involved interventions in the provincial field of jurisdiction incompatible with its own plans.

Its chief criticism of such national programmes was their inadequate recognition of the peculiar features of Quebec's society with its sharp regional contrasts. Its views

were forcibly expressed and illustrated in Mr. Rene Levesque's submission to the War on Poverty Conference in December, 1965. This argued that recent federal programmes tended to distort Quebec's own economic and social policies, disrupt its priorities, and hamper the integration imperative for their success. Quebec had inherited two unfortunate situations that the current policies at Ottawa failed to remedy. First, an excessively large proportion of its labour force was in old industries without the dynamism of new growth and the power to pay adequate wages.⁹ Secondly, the immense expansion of the Montreal metropolis (with two-fifths of the population and three-fifths of the industries of Quebec) imposed so drastic a drain on provincial resources and skilled manpower as to reduce some other areas to virtual stagnation. Consequently, the income per caput for labour in Montreal might sometimes be four times that for labour in the remote hinterland, thus seriously impairing the social cohesion of the French-Canadian community.

The federal Designated Area Programmes of 1963 and 1965, which encouraged by tax concessions the establishment of industries in areas of high unemployment, were criticized by the Quebec authorities because they conflicted with their own plans on the drawing-board to regroup and invigorate regional economies by choosing carefully a number of growth centres capable of rapid and permanent industrial expansion. The Quebec plan contemplated more than a temporary palliative for unemployment; it was specially tailored to achieve a balance in the demographic and industrial development of the province and ultimately to eliminate certain persistent pockets of poverty. Hence, in sponsoring it,

the government criticized the national proposal because it failed to select industries rigorously enough or exhibit real solicitude for the peculiarities of the Quebec situation. Similarly, Quebec found unsatisfactory certain federal programmes that gave direct loans to municipalities and winter works because they conflicted with its own schemes for municipal amalgamations and public works on a co-operative and regional basis. It asserted that its aims were frustrated by municipal capital invested on different lines. It complained also that its labour and social policies conflicted with those of the federal government, and emphasized that radical differences in aim and purpose made difficult a satisfactory co-ordination.

The meaning of Quebec's so-called Quiet Revolution is reasonably clear. It resulted mainly from the emergence of a fresh and vigorous political consciousness in the province, expressed by the influential figures in Mr. Lesage's Liberal party and the corps of able civil servants they recruited. These leaders and officials appreciated the plain fact that the best way to maintain the powers of government was to govern. By employing abundantly the wide authority that the constitution permits, they gave Quebec's autonomy a new and more solid significance.

The Liberal Government may have employed its powers too much and too rapidly in some sections of the society and inadequately in others. At any rate, its electoral defeat in June, 1966, suggested that it had failed to satisfy certain dissident elements of the public in the rural hinterland, in

small towns and villages, and in the more impoverished sections of the cities. Its educational reforms were particularly in dispute. It had created a public school system in which a regional composite high school, in part replacing the private classical colleges, was to play a crucial part in providing education from the primary to the higher stage. Apart from being expensive and increasing taxes (a result deplored by many frugal citizens), this educational change disturbed many tradition-minded Québécois because it threatened to transform the character of the society and diminish the influence of the old local ruling elites based on the parish. At the same time, the farmers and the unskilled workers, who competed in an unstable labour market, were not convinced that the Quiet Revolution for all its welfare facilities was of direct benefit to them. The disgruntled were sufficiently numerous and sufficiently well distributed in the constituencies to give the Union Nationale a majority.

Often Quebec's policies in the 1960's seem to differ only in manner from those of other provinces. All provinces now endeavour to utilize their legislative powers more intensively than ever before. All seek a larger part of the available tax fields. All are vigorously involved in plans of economic expansion and social experiment. Most discover fresh resources to exploit and novel problems to solve. All are sometimes impatient with Ottawa's less fortunate efforts to meet their varied needs, and especially impatient when such efforts are made without sufficient provincial consultation. Neglect of such consultation, whenever it occurs, is the unfortunate

vestige of a period when the provinces were weak and had few assets from which to bargain. Ontario, for example, little less than Quebec, found unsatisfactory the original Federal Designated Area Programme of 1963, the Canada Pension Plan, the Municipal Loan Fund, and the Student Loan Fund, and other recent programmes initiated in Ottawa. Like Quebec, Ontario also has ambitions for regional planning and development, although it confronts actual situations quite different from those of Quebec. Indeed, almost every province has a similar story to tell: the problems of development and adjustment to development crowd in on their ministries, and each wants to determine its own order of priorities to suit the circumstances of area and people. Each wants adequate room to manoeuvre within the arena of its competence, and resents national policies that severely restrict it. Quebec, therefore, is not unique, even though it is a special case owing to a different history and culture. The underlying forces at work were cited by Premier Duff Roblin in 1963: "During the periods of depression and war, the pendulum of need swung to the Central Government; now the problems we face are concerned with current development and growth. They indicate unmistakably a swing of the pendulum to the needs of the provinces".¹⁰

Yet, for all the similarity in Quebec's policies to those of Ontario and other provinces, its political leaders never cease to emphasize the special character of their province. Mr. Lesage stressed how Quebec was more federal in spirit and much less prone to capitulate to the centralizing pressures of Ottawa. He and his colleagues viewed their province, not as one among ten,

but as a cultural and national entity apart, the homeland and stronghold of the French Canadians. They believed, as Quebecers have always done, that for them federalism is important primarily because it helps to guarantee the survival of their culture. In effect, French-Canadian nationalism stimulates the intensity of Quebec's provincial spirit compared with that of any other province, and also helps to explain the single-minded zeal with which it now strives to create a modern, integrated, state-directed economy as a bulwark of its culture.

In other provinces, leaders normally argue for measures in terms of provincial material advantage with no feeling that what they advocate is designed to protect a special culture and nationality. They assume Canada as a whole constitutes a national state, of which the province is merely a segment. For Quebec leaders the matter is less simple. They see their province as inseparable from the French-Canadian community, to which they credit the attributes of nationality. They can never forget that the government of Quebec alone in Canada is unmistakably controlled by a French-Canadian electorate. It claims their prior loyalty, and they want to preserve intact its power. Most want to augment it.

Evidence of this nationalist thinking is the current emphasis on "a special status for Quebec". The phrase has different meanings for different people. It expresses sentiments that imply little or much in a given political context. For some it means no more than formalizing the rights and powers Quebec already has and the peculiar influence it commands in representing

most French Canadians. For others it refers to what Quebec lacks and should have - a special constitutional position that would greatly enlarge its stature, distinguish it from all other provinces, and enable it to preserve French-Canadian culture. Mr. Lesage once explained his idea of a special status in saying that "it would be the result of an evolution, during which Quebec would want to exert powers and responsibilities which the other provinces, for reasons of their own, might prefer to leave with the Federal Government."¹¹ This was the characteristic view of a pragmatic politician, cautious and unwilling to commit himself beforehand to explicit objectives. He saw progress achieved through successive administrative compromises. For the future he left himself free to test opinion and yield to it as he thought necessary.

Mr. Daniel Johnson, when leading the Opposition, was less cautious in defining goals and more emphatic in declaring what Quebec's special status should be. In his opinion, the central fact about Canada was the presence of two distinct nations: the French Canadian mainly in Quebec, and the English Canadian in the other provinces. In the past these two communities had managed to combine successfully within the federal state because an equilibrium was then feasible between the forces of unity and of diversity. But since 1945, circumstances have destroyed this equilibrium and the only satisfactory solution now is to overhaul the constitution and adapt it to the fact of two nations. Thus, Quebec should receive a special status with the larger powers of self-rule it needs, while at the same time the English-

speaking provinces would be able to achieve the greater collective unity they apparently want. In Mr. Johnson's view the kind of federation established under the British North America Act is obsolete and should be replaced by a new constitution permitting the two nations to rule themselves and fulfil their destiny with such institutional links between them as common interests might dictate. Such was the theme of his book, Egalité ou Independence.

All variants of the special status idea, including the concept of an associate state, rest on the two-nation assumption. Early in 1964, Mr. Rene Levesque, an impulsive phrase-maker, gave currency to the term "associate state in Confederation". Although he did not precisely explain his terms, he evidently intended Quebec to have wide economic, fiscal, and political powers to fulfil its role as the equivalent of a national state for French Canadians. Others carried the same notion to more extravagant lengths. Thus, the St. Jean-Baptiste Society of Montreal, in a brief published some months earlier and submitted in November, 1964 to the Constitutional Committee of the Quebec Legislature, would transform the present federation into a confederation, Quebec and English Canada being recognized as two sovereign states, associated for specific purposes by confederate institutions and treaties subject to revision every five years.

A feature of the current discussion in Quebec on the idea of an associate state is the lack of any satisfying analysis of its legal, economic, and social implications. Proponents seem unable to come to grips with the ultimate meaning in real

costs for Quebec and Canada of what they propose. Mr. Daniel Johnson admitted this fact. Shortly after his electoral victory in June, 1966, he protested to a reporter who asked whether he believed in an associate state for Quebec: "Oh, don't link me with that. I don't want to use the term 'associate state' because nobody knows exactly what it means."¹² Yet, unfortunately, such vagueness about the institutional meaning of a goal has rarely in any land inhibited the determination of an ardent nationalist. For him, in the final analysis, the claims of nationalism are ethical. The French Canadians in a variety of ways seek a tangible expression of their own national existence in the life of the country, and many are clearly dissatisfied with what they find in the present federation. They are not, any more than the English-speaking people of Ontario, of one mind except in the basic assumption that they want French Canada's identity to survive. French-Canadian nationalism in that sense is an inescapable and enduring reality that Canadians in general must learn to accept as they must also, in response to it, be prepared to make adjustments in federal institutions and practices without impairing the essentials of the system. The extent to which they do so with clear heads and genuine sympathy will affect the ultimate fate of Confederation.

Bilingualism and the Federation

A major aim among French Canadians is to preserve intact their language and culture. For the English-speaking Canadians the issue is how to reconcile this legitimate aim with an organic and viable national state. This is not simple, but

it is also not insuperable. Many other countries in the contemporary world confront a like problem. Bi-ethnic and multi-ethnic states in Europe and elsewhere offer examples of how it can be resolved. It is tempting to cite them and among other cases to emphasize the impressive one of Switzerland, which successfully sustains a genuine unity based on profound differences. Yet, for all the instances of co-existing and different cultures in one state, there is really none closely resembling that in Canada. There is no single appropriate model for imitation. The expedients suitable for this country must be fashioned by Canadians themselves responding to the logic of their history and experience. They must take their own past attempts as merely a starting-point for a more determined effort and a greater achievement. A fuller acceptance of bilingualism in the offices of the national government is an obvious step in that achievement.

The elements of the problem are clear. In national administration in Ottawa, the French have hitherto had to restrict or forego the use of their own tongue. For most of the time they were compelled to speak, read, and write English. Mr. F. Eugene Therrien, a member of the Glassco Royal Commission on Government Organization, reported his personal assessment on the extent to which bilingualism was accepted in the federal service and how French Canadians felt about it.¹³ He had two major criticisms: English was dominant in the internal communication of all federal departments; bilingualism was mainly reduced to the simple act of translation rather than the coexistence of two languages, and

translation was cumbersome and time-consuming.

This situation inevitably tended to discourage prospective Quebec candidates of competence, for in Ottawa they found it necessary to change language, friends, and environment. They felt like an uprooted people in an alien land. Hence, it was scarcely surprising that relatively few French Canadians reached high posts in important departments. Among those actually employed many accepted the language situation with a resigned shrug. Others in time lost heart and left. For them, in recent years, the expanding employment opportunities in the Quebec Government offered a welcome escape. This situation in Ottawa has been made all the more difficult to accept with the rising tempo of nationalism in the province of Quebec. Young French Canadians increasingly feel that since apparently they can never be accepted along with their language as full partners in the federal state, they see little reason to feel attached to it. The more pride they take in their own culture, the more intolerable is the discrimination against their language.

The situation, however, has changed for the better with the recent determination of the federal government and the Public Service Commission to establish a more genuine bilingualism in the upper echelons of the federal service and in those divisions in immediate contact with a French-speaking public. It is only necessary to emphasize that this significant policy of accommodating the practices of the federal government to the cultural claims of the French Canadians can bear full fruit only after prolonged and careful effort. To require and reward

bilingualism in certain offices is nationally sound. It is equally sound that the bilingual acquirement is simply a supplement to and not a replacement for other qualities essential in a competent civil service.

An increased bilingualism in the federal service is a difficult task to be pursued by the national government in the best and most equitable way it knows how. But the provinces are not exempt from responsibility in helping to make it successful. As a logical aid to national policy in this matter, the English-speaking provinces should ensure in schools and colleges across Canada effective provisions for teaching French in order that English-speaking youth will not suffer disadvantages in competing for posts in Ottawa and will feel at home in bilingual offices. There is more involved, however, than simply the personal interest of English candidates for the civil service. Wide and thorough teaching of the French language would help to extend among Canadians of every origin an appreciation of French-Canadian culture as a distinctive element in the country deeply rooted in its traditions. Bilingualism in certain strategic areas of the national life will be more acceptable to Canadians in general when it is emphasized as something indigenous, not extraneous, to the evolution of Canada's nationhood. Bilingualism indeed was inescapable in Canada from the day the country came under the British Crown. From the outset, the British rulers recognized that with a population so large convenience as well as natural justice required that the language of the people be respected. Today, the issue is to make bilingualism

a better established and a more efficient instrument in the conduct of national affairs.

Ontario's Role

In any reshaping of the cultural and institutional policies of the federation on such lines, Ontario has a conspicuous role to play. Quebec and Ontario are neighbours, and their histories, especially since 1841, have been inseparable. Future economic and social development in the valley of the St. Lawrence will almost certainly create a growing web of relations between the two communities, and will make harmonious participation in an effective federal union all the more imperative for both. Moreover, Ontario, aside from Quebec, has a larger number of citizens of French ethnic origin than any other province, or indeed than all the other eight English-speaking provinces combined. In the census of 1961 this number exceeded 647,000, or ten per cent of the population. The French by mother tongue are fewer than those by ethnic origin (some 61 per cent), but substantially exceed the total number of those in the two provinces of New Brunswick and Manitoba, where for generations French Canadians have resided and retained their language. A policy by Ontario for enlarging and entrenching the cultural rights of this minority will, therefore, be significant to a considerable proportion of the people of French extraction outside Quebec. It will testify that the most populous English-speaking province respects and seeks to preserve within its boundaries the French fact. No other province west of the Ottawa River is better able

or has more reason to foster a sense of partnership between the two founding peoples.

A French-Canadian community has existed in Ontario from the genesis of the province. In June, 1793, a resolution in the legislature of Upper Canada proposed that present and future acts should be translated into French to benefit the inhabitants in the western districts and other French settlers who might later arrive.¹⁴ This was doubtless the earliest proposal in the province for adjusting policy to bicultural circumstances. It exhibits a sage practicality in the intentions of the early legislators, who saw the advantage of employing the French language where the interests of citizens were clearly affected. Its sequel and the history of Franco-Ontarians in the nineteenth and early twentieth centuries constitute a story that cannot be told here. The major issue for this minority group concerned and still concerns their right to schools in which they are taught in their own tongue. Between 1871 and 1951 their numbers, swelled by immigrants from Quebec, grew sixfold. For them the Ontario-Quebec boundary was ethnic as well as physical. In crossing it they moved from an area where the language of the home was taught to children as normal practice to one where French instruction was a special privilege, secured only by residents with the sanction of the Minister of Education and the local school board.

Primary French schools emerged in Ontario, and have now a long and varied history.¹⁵ They are not guaranteed by the British North America Act nor by any provincial statute. They

have survived and developed on the basis of established custom and government policy, aided by a venerable Ontario law, the Separate School Act, which gives the individual citizen a free choice as to the type of school he supports with his taxes, whether separate and denominational, or public and undenominational. It subjects the curriculum, the certification of teachers, and general administration to provincial control. The Franco-Ontarians wanted schools that would be both Catholic and bilingual, and these they developed under the Separate School Act. In the city of Welland, where no separate schools were available, they secured bilingual schools within the non-denominational public school system.

Early in the present century the Franco-Ontarians were attempting something very difficult at a time when their numbers were growing rapidly - efficient instruction in two languages. The supply of efficient teachers was insufficient, funds were inadequate and the standards of the schools in both languages were often lamentably low. The provincial Department of Education and its inspectors criticized the schools, and the famous Regulation 17 was issued to improve standards in English. But its method of doing so involved a reduction in the amount of French, which the Franco-Ontarians interpreted as a proscription of their language. They engaged in vigorous protests. Regulation 17 was later modified, and in due time replaced. The struggle for higher standards continued successfully on other lines. Today, the bilingual separate schools at the primary level are a firmly established part of the Ontario educational structure, exemplifying

the two cultural streams.

At the secondary school level, however, a major problem is created by the inability of the separate school system to authorize tax money for high schools, except in special cases where grades IX and X have been placed under the Separate School Board.

Consequently, bilingual secondary schools, with few exceptions, are private institutions maintained through the fees paid by the parents above what they already must pay in educational taxes. This imposes an extra economic burden on Franco-Ontarian families inconsistent with the equality of citizenship to which they are entitled. It also seriously breaks for many students the stream of bilingual education from the primary into the secondary stage. Some drop out or enter the regular English high schools. The preservation of the language of the Franco-Ontarians is thus rendered insecure.

A new chapter in the story of bilingual education in Ontario opened in February of the present year (1967) in a conference of the L'Association Canadienne-Francaise d'Education d'Ontario. In more than half a century this association has unsuccessfully requested state-supported denominational secondary schools. In its February meeting it agreed to ask for bilingual secondary schools, integrated in the public school system. Compliance with such a request would enable the provincial government to avoid extending support to denominational education (opposed by many citizens of the province) and at the same time permit to help Franco-Ontarians secure bilingual education for

their children to the end of the high school stage.

Ottawa is a city where the Franco-Ontarians, who constitute between a fifth and a quarter of its population, would substantially benefit from a bilingual public high school. But Ottawa is of peculiar interest for another and important reason. It is Ontario's third largest city and growing rapidly. It is also the national capital and necessarily must be viewed differently from other municipalities. In this respect, it imposes a special responsibility on the provincial government.

A vocal body of opinion today emphasizes that it should become a distinguished symbol of the nation through a carefully planned development of its material features and through arrangements to make it genuinely reflect a bicultural and bilingual ideal. Some believe that these desirable objectives can best be achieved if Ottawa and Hull and their satellite municipalities are extracted from Ontario and Quebec, merged into a federal territory, and ruled by an agency accountable to the national government, which could plan its development as the national interest dictated.

There is much that is attractive in the idea of such a federal territory, but its implementation presents obvious and formidable difficulties. It involves drastic political surgery that would separate two growing cities from their present provincial hinterlands, force them into a new political relationship, and have their development supervised by a government with no previous experience in coping with the details of municipal administration. One of many practical problems would be that of

drawing a satisfactory boundary line between the federal territory and the portion of Ontario in the Ottawa valley outside. Ottawa is likely to grow into a large city, and a boundary determined today would likely be irrelevant to circumstances twenty-five years hence. The issue of divided jurisdiction might then arise in a new and no less embarrassing form.

One fact needs no labouring. The Ontario Government has unlimited scope to collaborate at any time with the federal government and the National Capital Commission to further Ottawa's growth both as an attractive national capital and as an Ontario city. There is, of course, no anomaly in a federal capital being situated within a province, and it need suffer from no disability. Vienna is not merely the capital of the federal republic of Austria, but also one of the provinces of the federation. Berne is both the capital of the Swiss Confederation and also of a canton bearing the same name. In these instances, what seemed most practical was adopted, and the same rule of practicality must apply to the problem of Canada's capital. Through the expenditure of federal money, Ottawa and its surroundings have already improved remarkably in physical appearance, and could improve even more in this and other respects should the Ontario Government accomplish two things. First, secure in some form, perhaps through a metropolitan type of administration broadly on the Toronto pattern, a consolidation of the satellite municipalities about Ottawa, which would facilitate more effectual planning of development and easier collaboration with the National Capital Commission. The government has already

taken the initial steps towards achieving this end. Second, the creation in the Ottawa area of a bilingual district, wherein both English and French would be recognized as official languages. If at the same time a public bilingual secondary school was established, the capital city would at once assume a character in which French Canadians no less than the English would take a more genuine pride. An improved position for Hull is also needed. This can come from the Quebec Government, consolidating the municipalities of the area and also from the federal government spending more money than it has been inclined to in the past within the Hull municipality. But whatever is done on the Quebec side of the Ottawa River, Ontario has the opportunity to shape the course of development that will make the capital more worthy of the nation.

The Constitution and the Federation

During the last five years in Quebec and to lesser extent in the English-speaking provinces, many have advanced the view that Canada urgently needs considerable constitutional changes or even a brand new constitution to replace the British North America Act and hold the country together. Some proponents of this view exhibit confusion about the character of the constitution, and it is relevant here to make one or two points clear. The constitution of Canada is not contained simply in the British North America Act, although that statute is one of its cornerstones. The constitution of Canada, like that of Britain from which it evolved, consists of the fundamental laws

and usages of the land, regulating the organs of government, defining their functions, and insuring the rights and liberties of citizens. It is a complex fabric of statutes, conventions, usages, and court decisions. The British North America Act is one of the indispensable and fundamental laws in this fabric. It joined the original provinces in a federal association, prescribed for it a framework of monarchical and parliamentary institutions, and distributed legislative power between the Dominion and the provinces. But it is supplemented by many other statutes, including of course its amendments, and by a body of conventions and usages governing the exercise of political power in the country.

When it is proposed that the constitution should be changed, it is pertinent to ask, what part of the constitution? The statutes, the numerous conventions and usages, or everything? Some proposals made in contemporary Quebec clearly envisage radical changes in those sections of the British North America Act that distribute power in the federation with the purpose of making Quebec a more independent political entity. The other nine provinces are unlikely to agree to any drastic amendments of this kind. They would usually argue that the British North America Act as interpreted by the courts now leaves with Quebec and other provinces substantial powers. Doubtless, in some cases, it would be advantageous to have these powers more clearly defined and modified in certain details. This kind of clarification and change can perhaps best be achieved in individual instances as inconveniences and undesirable situations are

demonstrated. This was done in the amendments concerned with old age pensions in 1951, the retiring age for judges in 1960, and disability pensions and benefits in 1964. These amendments were all effected with the unanimous consent of the provinces.

Today there is clearly a genuine difference of outlook between Quebec and the other provinces on the question of altering the constitution. The upsurge of French-Canadian nationalism has led to a hungering for a new status in Quebec that has no counterpart in other provinces. Quebec leaders, however, may become convinced that this appetite for constitutional change may be satisfied by agreements and understandings between the federal and provincial governments on matters of economic and social development. Federalism today, after all, rests not merely on a distribution of legislative powers, but on agreements reached through consultation on how powers are to be employed. This means a remarkably flexible federal system, subject to change according to circumstances, and that is precisely what Canada at present enjoys. The constitution imposes no serious handicap on the eleven governments exploring together fresh policies of vital concern to all and necessary to ensure the economic and social progress of Canada. It also imposes no handicap on the various governments recognizing more clearly than ever in the past the fact of two cultures and two languages.

In discussing the constitution, it is relevant to remind ourselves that Canadians have hitherto dismally failed to agree on one important constitutional matter: how to alter the distribution of legislative power between the federal and provincial

governments without resort to the undignified anachronism of requesting the parliament at Westminster to amend one of its own statutes for which it is now in no way responsible and in which it can have only a secondary interest. The unfortunate story of the Fulton-Favreau formula might have had a different ending but for the new nationalist mood in Quebec. Yet one may still repeat without embellishment the remark in 1949 of Mr. St. Laurent: "The United Kingdom authorities, I will not say resent, but do not like, the position in which they are placed of having to rubber-stamp decisions for Canadians made by the representatives of Canadians, and having to do it because no other procedure has yet been devised in Canada for implementing these decisions. I believe we must recognize that either Canada is a sovereign state or she is not. If the former is true, then Canada must act as an adult nation, and assume her own responsibilities."

FOOTNOTES

1. Final Report of the Royal Commission on Canada's Economic Prospects (Ottawa, 1957), 403.
2. Proceedings of the Dominion-Provincial Conference of 1960, 95.
3. Federal-Provincial Conditional Grant and Shared-Cost Programmes, 1962 (Ottawa, 1963), 6-9.
4. Rowell-Sirois Report, I, 257-9.
5. Report of the Proceedings of the Fifth Annual Conference, Institute of Public Administration of Canada (1953), 374.
6. Proceedings of the Federal-Provincial Conference, 1955, Preliminary meeting, 34-35.
7. Report of the Federal-Provincial Conference, 1963, 40.
8. Proceedings of the Federal-Provincial Conference, 1955, 20-21.
9. Such are tobacco, leather, rubber, textiles, clothing and furniture.
10. Proceedings of the Federal-Provincial Conference, 1963, 58.
11. Quoted in The Telegram, Toronto, October 14, 1965.
12. Toronto Daily Star, June 15, 1966.
13. Report of The Royal Commission on Government Organization (Ottawa, 1962), I, 67-77.
14. Journals of the Legislative Assembly of Upper Canada, 1792-1804. Sixth Report of the Bureau of Archives for the Province of Ontario. (Toronto, 1911), 23.
15. Their history is traced in Report of the Royal Commission on Education in Ontario, known briefly as the Hope Commission Report (Toronto 1950), chapters 16 and 17. Much of the past controversy connected with them is narrated by Franklin A. Walker, Catholic Education and Politics in Ontario (Toronto, 1964).

The Proposal of a Federal Territory For
Canada's Capital

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September, 1966

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INTRODUCTION

Ever since Confederation there have been proposals that the area surrounding Ottawa should be turned into a federal capital territory, like those that have been created for other federal capitals such as Washington and Canberra. It has been argued that, as a matter of principle, the national seat of government of a federal country should not come under the control and laws of a single municipality in a single province. However, the case for a federal territory did not become really strong until after the second world war, when Canada's rise to a middle power on the world stage gave her people a greater interest in developing the capital city as a symbol of the nation.

The wartime growth of the civil service and the expansion of population in the whole Ottawa-Hull metropolitan area made it clear that the problems of the future development of the capital could not be solved simply by arrangements worked out between the Federal Government and the City of Ottawa. The Federal Government therefore decided to have a Master Plan prepared for the future development of the national capital, and since then has devoted considerable effort and money, through its agent the National Capital Commission (formerly the Federal District Commission), to the implementation of the Plan. Because

the Federal Government has no direct governmental control over the capital area, however, numerous difficulties have been encountered in implementing the Plan. It has become clear that the Plan cannot be fully implemented under existing arrangements because it depends for its implementation on the agreement and co-operation of not only the Governments of Ontario and Quebec but also the numerous municipalities in the Ottawa-Hull metropolitan area. Their interests, of course, often do not coincide with those of the Federal Government, and their financial resources and administrative capabilities are often inadequate to meet the tasks of implementing the Plan. There has therefore been a continuing interest in the proposal for a federal capital territory to solve this problem.

Recently, the proposal has been given additional support from another source. It is argued that a federally governed capital territory could be made genuinely bilingual and bicultural, and should become a model in this respect for the rest of Canada.

Since no adequate history or analysis of the proposal has as yet been written, the Ontario Committee on Confederation have asked me to prepare this brief study.

Because of the confusion in the use of terms applied to the national capital area, it may be useful to clarify at the beginning what the proposal involves. Because of the division of powers between the central government and the provinces in the British North America Act, the former has no control over the federal capital or its surrounding area regarding any matter

which comes under provincial or municipal jurisdiction. For any such matter Ottawa and its adjacent municipalities are governed by the laws of the Province of Ontario, while Hull and its adjacent municipalities are governed by Quebec law. This means that the central government has no direct power to impose its will on the capital district, or to implement any plan it may have for it, without the agreement and co-operation of the provincial and municipal governments that may be involved. The proposal of a federal territory, on the other hand, would require the ceding of land on the Ottawa and Hull sides of the Ottawa river by the governments of Ontario and Quebec to the Federal Government, and the whole area would come directly under the jurisdiction of the Federal Parliament. It is important to note, however - because of the frequent assumption to the contrary - that the proposal does not necessarily imply the abolition of all municipalities in the area, the loss of voting rights, or direct administration by the Federal Government, as in Washington.

Provincial laws and court systems would no longer apply to the federal territory, except by agreement between the Federal Government and the provinces concerned, and all normal provincial and municipal services and taxes would have to be provided for under federal law. The proposal usually assumes that the boundaries of the new federal territory would approximate those of the present National Capital Region, as defined for the purposes of the National Capital Plan and for the activities of the National Capital Commission.

Because the District of Columbia is often referred to

as the Federal District, the terms "federal district" and "national capital district" are often used in Canada to describe this proposal. Unfortunately, however, the terms "federal district" and "national capital district" were also adopted to describe the area of interest and planning for the old Federal District Commission. In order to avoid confusion I have therefore chosen to use the term "federal territory" in reference to the proposal for a capital area coming exclusively under the jurisdiction of the Federal Government.

The proposal is similar to but not as far-reaching as another one made recently: that the National Capital Region should be turned into an eleventh province. This idea will also be considered briefly in the present study, because of its similarity to the proposal for a federal territory.

For information on the history of the capital, I have relied heavily on Wilfrid Eggleston's invaluable The Queen's Choice. I should like to thank officials of the National Capital Commission and the Cities of Ottawa, Hull and Eastview for their help in providing information on recent developments in the National Capital Region.

It is my hope that this study will help to solve the problem of reconciling the interests of the local residents and of the people of Canada in the government and future development of the nation's capital.

D.C.R.

Ottawa,
September, 1966

I. THE ORIGIN OF THE PROBLEM

It was mainly an accident of history that the Federal Government's present area of interest for the development of the national capital covers two cities in two different provinces as well as territory beyond the cities in both provinces. When Ottawa was chosen as the capital city, scant attention was paid to the fact that part of the urban population lived across the river in a different province. It was not at that time realized, of course, that the building of bridges across the Ottawa river would to a large extent remove the river as a barrier between the two populations on each side, and that the whole area would develop into one vast interdependent urban complex. Nor was it thought that the relationships between the central government and the City of Ottawa would be at all complicated. Those were the days before the age of the welfare state, when the civil service was extremely small. It was therefore expected that the federal land on "Barracks Hill" would be sufficient to contain the Parliament buildings and all federal administrative offices for the foreseeable future. It is perhaps for this reason that no one at the time of Confederation seems to have seriously proposed a federal territory for the capital, despite the precedent established by the creation of the District of Columbia long before this in the United States.

The difference between the choice of Washington and Ottawa as capitals is that Washington had been created as a new capital after the formation of the United States, whereas Ottawa was a thriving lumber town and had already been chosen as the capital of the Province of Canada before Confederation. Since Toronto and Quebec were the obvious choices for the newly created provinces of Ontario and Quebec, it seemed logical to leave Ottawa as the capital of the new Dominion, and simply to place the new Federal Parliament and its administration in the buildings that had been constructed for the Parliament of the former Province of Canada.

There was an inherent flaw and source of future friction in this arrangement, however, though it seems to have aroused little or no apprehension at the time. "The point is" as Wilfrid Eggleston has pointed out, "that the constitutional position of Ottawa as the capital was materially altered by the decision of 1864-67; and the change in that particular respect was a retrograde step. As capital of the Province of Canada, no serious jurisdictional problems could possibly arise between the Crown and the Town in Ottawa, for the municipality of Ottawa would have continued to be under the direct control of the Provincial Government on Parliament Hill. Nor would any problem arise if government activities spread into adjoining municipalities or even across the Ottawa river into Canada East, since between 1840 and 1867 the Ottawa river merely separated two geographical divisions of one province.

"But Confederation changed all that. Now Ontario and Quebec were autonomous states within their defined powers, and these powers included the exclusive control of municipal and local matters. Now Ottawa, by the B.N.A. Act, was a federal capital located within a provincial municipality, and the latter took its orders not from Parliament Hill, but from Queen's Park, 275 miles away, and from a jurisdiction separate and autonomous and independent in broad respects from the central federal government. And the Ottawa river had once again become a boundary between two autonomous governments."¹

Hence any extension of the Federal Government's interest beyond the immediate boundaries of Parliament Hill was bound to involve differences of interest and delicate relations with the City of Ottawa, and ultimately with the City of Hull, the municipalities surrounding these cities and the provincial governments of Ontario and Quebec, under whose control they came for all provincial and municipal purposes. Moreover, the Ontario side of the river was mainly English-speaking, Protestant, and governed under the English common law, while the Quebec side was soon to become mainly French-speaking and Roman Catholic, and was governed under the radically different Quebec civil code, which had been inherited from French law.

As long as the interests of the Federal Government in the capital city remained largely confined to Parliament Hill or even mainly to the City of Ottawa, the difficulties inherent in this situation did not become acute. In fact, they were not revealed for many years, because the majority of the people and

of Parliament remained unimpressed by the early declaration of one of the fathers of Confederation, John Hamilton Gray, that the capital city "might fairly rest its claim for support upon the people of the Dominion."²

The reason for this lack of interest by the people of the Dominion in their responsibility for the capital city, least of all in Gray's proposal of a federal territory for Ottawa, is explained by Wilfred Eggleston (p. 147) in this way:

When a capital city is created from the ground up, in hitherto unoccupied territory, as at Canberra and Brasilia, the national or federal government must force proceed to establish a new community from scratch. There are no taxpayers yet to levy upon for municipal services, and the central government must construct and operate and pay for its own. In such circumstances, a "federal district" comes into being almost automatically.

But such was not the case with Ottawa. It was already a city of 18,000 persons by 1867. The rudiments, at least, of essential municipal services were already in existence. There was a well-established tradition of self-government in municipal matters, long predating Confederation. The Government of the Province of Canada in 1859 never proposed to set up a separate or rival municipality, when it began erecting the Parliament Buildings. Nor did the Government of the Dominion of Canada in 1867. It is true that pending the strengthening of Ottawa's municipal services the Canadian Government undertook to provide some utilities of its own. In 1859, the City of Ottawa still had no water supply except that provided by private carriers freighting water from the river. The Provincial Commissioner of Public Works put in a small plant down below the Library, to pump water for the buildings. A separate sewage system was built by the Provincial Government when the buildings were under construction. Some elementary fire protection was also provided, and the policing of the Hill was under provincial and then federal control.

The early government buildings were physically confined to Parliament Hill, which from the beginning had been Ordnance Land, and which had never been taxed for municipal purposes. Since at first the government buildings even provided their own

utilities, the people and Parliament of Canada felt no great responsibility for the welfare of the city. Nor was the City Corporation very conscious of the costs or inconveniences arising out of the presence of a seat of government. In fact, the activities of the Federal Government did not impinge very much on the municipality for the first fifteen years.

But the existing arrangements contained an incipient conflict of interests between Crown and Town. "In several respects," Eggleston has observed (p. 147), "the effect of the planting of the Canadian capital within the municipal limits of Ottawa was not unlike that of the location of a large private corporation. Both operations require massive new construction, create new jobs, and, before long, additional municipal burdens. But in two vital elements there is a sharp contrast. Government properties are given permanent exemption from municipal taxation by the terms of the British North America Act, and governments possess contingent powers no private company ever enjoyed. One is the power of expropriation." Before long the Federal Government would find it necessary to expand beyond the limits of Parliament Hill into the heart of the business section of Ottawa. Then the municipal services needed for the new government buildings would begin to lay heavy new burdens on the City and the difficulties inherent in placing the federal capital within the confines of a municipality controlled by a single province would begin to be revealed.

II. EARLY ATTEMPTS TO MEET THE PROBLEM

The problem created by the location of the federal capital within the boundaries of a municipality governed by provincial law, and immediately adjacent to another municipality governed by the laws of a different province, did not become fully apparent until the Federal Government began taking an interest in the beautification and future development of the capital.

It was almost the turn of the century before the Government began to recognize its special responsibilities for developing the area in which its seat of government was situated. The 1890's had seen a great quickening of interest throughout North America in city architecture and planning. In June of 1893, while leader of the Opposition, Wilfred Laurier had stated that Ottawa should become the "Washington of the North", and this idea had begun to fire people's imaginations toward the future development of a great capital city. But until after 1895 - the end of the "Great Depression" - the Federal Government was chronically hard up. Just before Laurier's accession to power in 1896, two city councillors, Fred Cook and Robert Stewart, succeeded in getting Ottawa's Council to appoint a committee to make a study of the principal capitals in the British Empire, in order to demonstrate to the Federal Government both its opportunities and its obligations for the development of the federal capital. In 1897, the City made use of this information in a petition to the Laurier Government. The

petition pointed out that the United Kingdom Government paid municipal rates to London on all its properties, including the Houses of Parliament, and noted that the tax-exempt properties owned by the Crown within the city of Ottawa in 1897 were valued at \$14 million. Also the City had received no compensation from the Federal government for the City's large outlay on public works, in contrast with the practice in other parts of the world. This petition no doubt had considerable influence upon the Government, for in 1899, it initiated an annual grant to Ottawa of \$60,000 to meet these claims. It also created the Ottawa Improvement Commission, which consisted of four commissioners, three chosen by the Federal Government and one by the City of Ottawa, and which began its work with an annual grant of \$60,000.

In the early years of this century the Ottawa Improvement Commission did much good work in beautifying Ottawa's parks and driveways. But, as Eggleston has noted (p.166), it was "handicapped by insufficient funds, restricted powers, and possibly, by lack of imagination. As it was not created as a town planning body, and in any event lacked authority in that field, its remedies were bound to be superficial rather than basic." Although it had hired an architect, F.G. Todd, who had submitted a plan for the future development of the Ottawa area as early as 1903, architects and others began to realize that the Ottawa Improvement Commission was incapable of meeting the problem. In 1911, for example, a deputation of members of the Royal Architectural Institute of Canada presented a brief to the new Prime Minister, Robert Borden, complaining about the lack of

planned development of the capital, and pointed to the difficulties of finding a satisfactory site for new government buildings and to the still-existing need for relocating the railways and amending the street system of the city. As a result, in 1913 the Borden Government appointed a Federal Plan Commission, chaired by Herbert S. (later Sir Herbert) Holt of Montreal, with five other members, including the mayors of Ottawa and Hull. The terms of reference instructed the Commission to "draw up and perfect a comprehensive scheme or plan, looking to the future growth and development of the City of Ottawa and the City of Hull, and their environs..." This was the first time that the Federal Government had officially recognized any responsibility for the development of the Hull side of the river or even the environs of Ottawa. The Holt Commission, which reported in 1915, developed a comprehensive and impressive plan for the future development of Ottawa, Hull, and the surrounding area. It recognized that the power to implement the far-reach proposals it had made (which involved the reconstruction of a good deal of Ottawa) came constitutionally under the jurisdiction of the Governments of Ontario and Quebec and of the municipalities in the area. Foreseeing the difficulties of divided jurisdiction involved, the Commission proposed the outright creation of a federal district and federal control over local government.

Unfortunately, the report of the Holt Commission was badly timed, coming as it did in the midst of the first world war, and just at the time that the Parliament building burned down. The building, which burned on February 3, 1916, required ten years and \$12 million to rebuild, enlarge and furnish.

As a result, except for raising the annual grant to the Ottawa Improvement Commission in 1917 from \$100,000 to \$150,000 a year, nothing much was done for ten years about the recommendations in the report, even though Noulan Cauchon, planning consultant to the City of Ottawa, had in 1922 produced an updated revision of the plan.

Cauchon had proposed, as his administrative solution to the problem, a federal commission which would have authority over the physical features and public utilities of a "federal district", but which would preserve provincial and municipal autonomy in other respects. Being essentially an architect and planner, he did not seem to realize that, constitutionally, even the federal Parliament did not possess this authority and so could not delegate it to a commission. Hence the commission would not have the power to implement the far-reaching plans for redevelopment that he and the Holt Commission had proposed. Those who read his report may also have been led to believe that all that was needed to implement the plans was for the Federal Government to establish a more powerful body with jurisdiction over an enlarged "federal district", and that therefore the creation of a federally governed territory would be unnecessary. At any rate, in 1927 the Ottawa Improvement Commission was reconstituted as the Federal District Commission, with broadened powers and the extension of its interests into Quebec. The (by then) eight members of the older Commission were increased to ten, of which one was to be a resident of Hull. Thus, for the first time, Hull was officially recognized as being part of the federal capital.

The next year a situation arose in the heart of Ottawa which forced the Federal Government to intervene. It led to a reduction in the new annual grant from \$250,000 to \$200,000, and the provision of the capital sum of \$3 million to create the open space now known as Confederation Square. The old Russell House Hotel was currently being demolished, and the owners were proposing to erect a new modern hotel on the site. In order to preserve the site as an open space, the Federal Government had to act quickly to enable the Commission to expropriate it and other properties needed to open up the area. However, aside from this major expropriation to create a vista of the Parliament buildings from the south-east, the Commission acted essentially as a parks and driveway development commission. In the twelve years from 1927 to 1939 the F.D.C. parks area was enlarged to 900 acres, and the length of the federally owned and maintained driveway was increased to 22 miles, including an extension across the Champlain Bridge into Quebec. But the constitutional limits to the F.D.C.'s powers, the long depression of the 1930's, and the outbreak of the war discouraged any more ambitious attempts to implement the Holt Report of 1915.

Meanwhile, the growth of the welfare state in the 20's and 30's had caused a gradual encroachment by the Federal Government into the heart of Ottawa for buildings to house its administrative personnel. The great influx of military and civilian personnel connected with the second world war, of course, greatly accelerated this trend. The total space in the city

coming to be occupied by the Federal Government through construction, purchase or rental could not help but create tensions and difficulties between Crown and Town. Eggleston (p. 177) lists a total of 23 permanent buildings that had been erected between 1918 and 1945 and notes that no fewer than fourteen wartime so-called "temporary" buildings had been built in assorted locations throughout Ottawa. These properties of course were all tax-exempt, and often occupied the space of former businesses that had been paying property and business taxes to the City. At the same time they required the continuing provision of all normal municipal services. The growing number of foreign embassies and headquarters of Crown corporations, which were similarly tax-exempt, exacerbated the problem.

This was a problem which could be largely solved by larger grants to the City. But the problem created by the constitutionally restricted powers of the Federal District Commission to redevelop the cities of Ottawa and Hull and their surrounding area, could not be so easily solved.

III. THE EVOLUTION OF THE NATIONAL CAPITAL REGION, 1944-58

The Federal Government responded to Ottawa's claim for "better fiscal terms" by setting up a special Joint Committee of the Senate and House in 1944. Although the Committee did not accept the City's contention that an annual payment of nearly \$1,600,000 was needed to offset the loss of taxes from government tax-exempt property, it did recommend that for a period of five years the annual grant to Ottawa should be raised from \$100,000 to \$300,000, and the Government accepted this recommendation. Part of the Government's difficulty was that it could not pay adequate compensation to Ottawa without recognizing a similar responsibility for its tax-exempt properties in other cities of Canada. In 1949, however, it recognized these responsibilities by passing the Municipal Grants Act, and by 1955 Ottawa was receiving under this Act an amount substantially larger than that requested by the City in 1944. It also agreed to pay grants in lieu of taxes on embassy properties and required Crown corporations to pay similar grants (though the City still complains that some Crown corporations refuse to pay normal business taxes).

Although the Committee of 1944 devoted most of its attention to the City's financial problem, it could not avoid recognizing the larger problem of how to redevelop the national capital under divided jurisdiction. In its final report it recommended "that the powers of the Federal District Commission be increased, and its personnel be enlarged to include, not only

representation from the Ottawa area, but of the people of Canada as a whole. The name Federal District Commission might even be changed to include the idea of a National Capital."³ But the Committee felt that the only permanent solution to the problem might lie in the creation of a federal territory, as shown by these words from its report:

From the observations made by this Committee during its investigations, it is clear that with the growth of Canada and the corresponding expansion of its governmental activities, the administrative problems arising between the City of Ottawa and the Federal Government will become more complex and more difficult of settlement than they are now. As an indication of that prospect we would merely stress the inevitable difficulty that will arise in connection with the present reckless system of sewage disposal in the Ottawa river, the both banks of which within the most directly affected area, are the property of the Dominion of Canada.

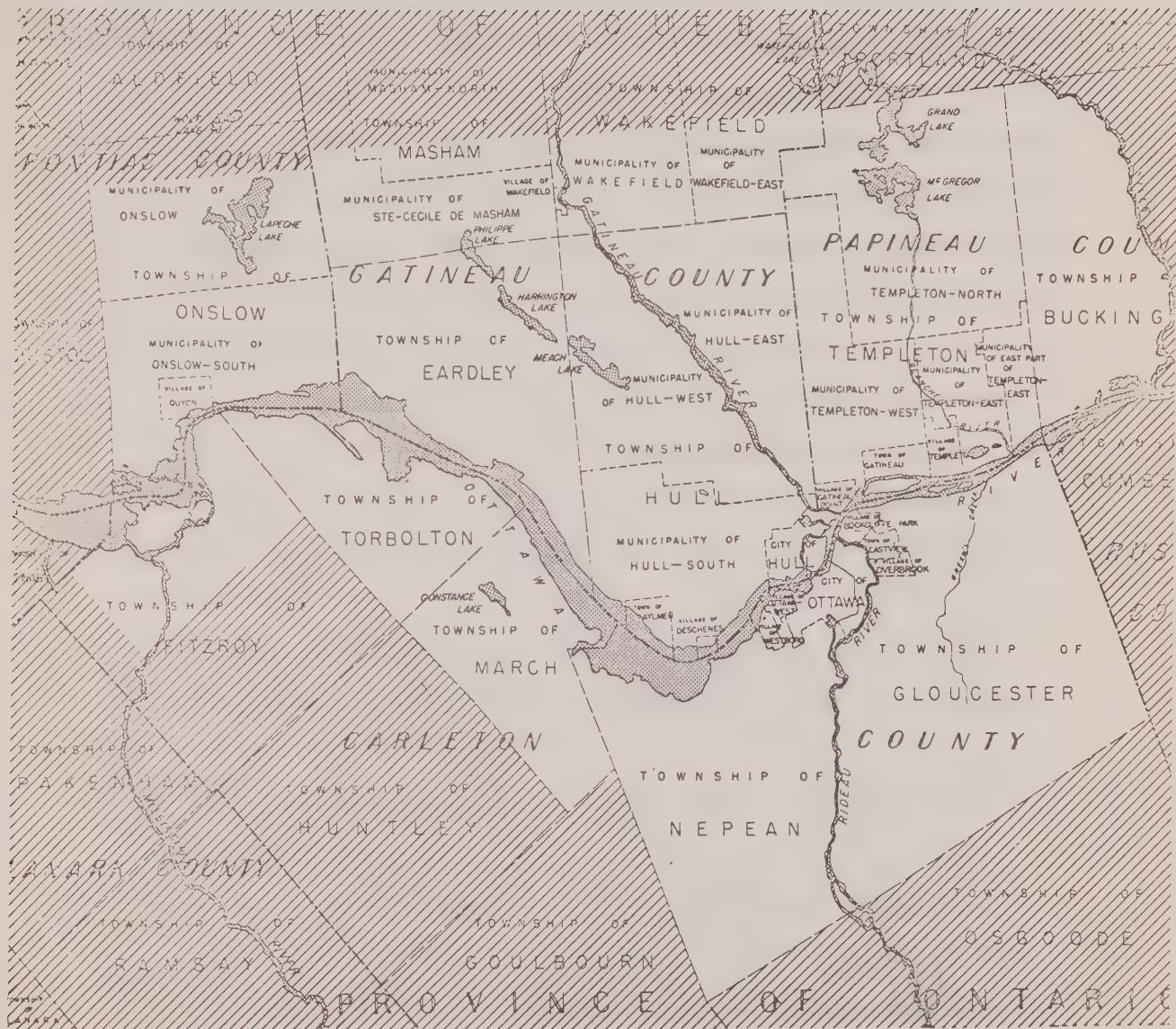
It is not the purpose of this Committee to make definite recommendations to the Government regarding the future character of a Federal District to embrace the park area and the municipalities on either side of the Ottawa river ...We are of the opinion, however, that this long-term project should be committed by the Government to a special commission of experts for investigation and report, involving as it would the possession of expert professional knowledge and the need for extended travel to study the plans and workings of federal capital districts in other countries.⁴

In 1928, at the time of the debate in the House of Commons over the expropriation of the site of the old Russell House Hotel, Mackenzie King had expressed his conviction that the creation of a federal territory was the eventual solution to the problems of the national capital. Hence it is curious that his Government did not take up this recommendation of the Committee of 1944. It may be that his view was changed in this respect by the opinion of M. Jacques Greber, the French town

planner whom he had invited to Ottawa in 1937 to prepare plans for the development of Confederation Square. Eggleston reveals (p. 184) that at that time they had some discussions on the desirability of a federal territory and the French adviser said his own studies of such authorities in other parts of the world led him to believe that this was not the answer. M. Greber, of course, had not lived under a federal system of government and was not fully conversant with the difficulties of divided jurisdiction involved.

In any case, nothing was done about the Committee's proposal for a thorough study of the constitutional and administrative problems and the idea of a federal territory, even though the Prime Minister had by then become convinced that the redevelopment of the entire national capital area should be undertaken as a national memorial of the second world war. Apparently he had been persuaded that this project could be brought to fruition without the creation of a federal territory. Instead, he brought M. Greber to Ottawa at the end of the war to prepare a new plan for the capital, and an Order-in-Council was passed in 1945 defining some 900 square miles as the National Capital District for purposes of this plan.

The proposals for redevelopment contained in the resulting National Capital Plan, completed in 1950, were much more far-reaching than those of the earlier Holt Report. Since meanwhile Ottawa and Hull had developed without a plan and the National Capital District now took in many municipalities surrounding Ottawa and Hull, the problem of correcting the errors and implementing the Plan would be that much more difficult.



LEGEND

- INTERPROVINCIAL BOUNDARIES
- - - COUNTY BOUNDARIES
— TOWNSHIP BOUNDARIES
- - - MUNICIPAL BOUNDARIES

ADMINISTRATIVE BOUNDARIES WITHIN THE NATIONAL CAPITAL REGION

1948

Source: National Capital Planning Service, Plan For the National Capital: General Report (Ottawa, 1950), p. 6.

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Perhaps because of his lack of a thorough knowledge of constitutional law and political realities, M. Greber seems to have fallen into the trap into which many other purely technically trained town planners have fallen, of not distinguishing clearly between the preparation and the implementation of a plan. In 1939, in a preliminary report to the Prime Minister he had pointed out his lack of qualifications for discussing the administrative problem, but at the same time had left the inference that a comprehensive plan could be fully implemented through the use of co-operation and co-ordination between the many interested jurisdictions:

I understand that the question may be considered of eventually creating a District Capital for the Dominion of Canada, along the principle of the District of Columbia in the United States.

As I have no qualifications for discussing the need for a Federal District Capital from the political or general administration viewpoint, I beg to submit to you the following remarks, limited to the purely city planning problem.

Several examples of regional planning and comprehensive by-laws on city development, in Europe and in America, show that this particular problem, even when it affects a large number of municipalities, may be successfully studied and solved without deeply changing their respective administrations, but by organizing, only for the purpose of their better co-ordinated planning and common zoning and building legislation, a central Planning Board, specially appointed to elaborate and to control the execution of the plans and the enforcement of the by-laws.⁵

In these words, M. Greber reveals that he failed to make the vital distinction between the elaboration of plans and the control of their execution. Further on in this report, he drew encouragement from the experience of France and the United States with regional planning, but in doing so ignored the fact that

France did not have a federal government, and that the regional plans in the United States to which he referred (The New York Regional Plan and the Philadelphia Tri-State Planning Corporation) did not involve the federal government. By stating that these regional authorities were "entrusted with a purely technical work, without interfering with the existing Town or State administrations,"⁶ he was again failing to make a distinction between their success at preparing a plan and the governmental problem of ensuring its implementation.

It seems clear that the Federal Government was greatly influenced by these views. The only significant administrative change it made in preparation for the capital's redevelopment was to arrange for the kind of planning body M. Greber had recommended. This was a National Capital Planning Committee, with local and national representation. It was created merely by a by-law of the Federal District Commission. In 1946 the latter's membership was increased from ten to twenty, to include a representative from each province, and it was given additional powers, including authority over the site and architecture of federal buildings. But basically its status remained unchanged.

Both the Master Plan preliminary and final reports of 1948 and 1950, which were prepared by the National Capital Planning Service under M. Greber's direction and approved by the National Capital Planning Committee, reprinted M. Greber's preliminary report of 1939. The final report recommended no change in the status and powers of the Federal District Commission, and in its section on "legal matters" clearly indicated that it

was depending upon the co-operation of the Governments of Ontario and Quebec and of all the municipalities in the new National Capital District for the successful implementation of the Plan. But the problem of what would happen if these governments did not co-operate was never squarely faced. The fact is that the National Capital Committee was a purely unofficial body so far as these governments were concerned, and neither it nor the Federal District Commission had power to enforce any part of the Plan which did not lie on federally owned territory.

Because the City of Ottawa co-operated whole-heartedly in taking the initial action necessary to control the development of its urban fringes and to preserve the Plan's proposed Greenbelt around Ottawa, this difficulty did not become revealed for some time. After the appointment of the National Capital Planning Committee, Ottawa took steps under the Ontario Planning Act of 1946 to establish in 1947 the Ottawa Planning Area Board, whose planning area included not only the City of Ottawa, but also the Town of Eastview, the Village of Rockcliffe Park and the Townships of Gloucester, Nepean, March, Torbolton and Fitzroy - all the municipalities that were within the boundaries of the Ottawa side of the National Capital District. Membership on the Board was weighted in favour of the City, with usually five from Ottawa, one from the Federal District Commission, one from the Central Mortgage and Housing Corporation, and only two from the surrounding municipalities (Gloucester and Nepean). The City also applied to the Ontario Municipal Board to annex those parts of the Townships of Nepean and Gloucester which lay

within the inner ring of the proposed Greenbelt. But it met opposition from Nepean and also from the County of Carleton. Because of this, and perhaps also because the boundaries of the Greenbelt had not been definitely established at this time, the size of the original area asked for was reduced by the Ontario Board. As a result, a considerable, gap was left between the new southern boundary of the City and the inner ring of the Greenbelt in Nepean. Gaps were also left at the western boundary of the City, and at the eastern boundary in Gloucester. Other effects of the annexation, which became effective on January 1, 1950 were to enclose Rockcliffe Park and Eastview completely within the boundaries of the City, and to multiply the City's area by five times.

The effective implementation of a city plan, of course, requires a comprehensive zoning by-law, or at least zoning by-laws for those parts of a municipality which are undergoing rapid sub-division and urban development. The older City had had no Master Plan, no detailed plan of land use, and no comprehensive zoning by-law. Although Ottawa was now at least in a position to begin work on these matters within its own territory, none of the other municipalities in the area had zoning by-laws or any facilities for implementing the National Capital Plan. The Ottawa Planning Area Board was staffed by the City's Planning department, and tended to ignore the planning needs of the surrounding municipalities. Although the Board had approved in principle the proposals of the National Capital Plan for the Ottawa side of the river, it did not have adequate facilities to control urban development,

especially beyond the boundaries of the City and in particular in the area designated as the Greenbelt. Nor, of course, did it at that time have any facilities to plan and carry out redevelopment. On the Hull side of the river, no adequate planning machinery existed for implementing that side's share of the Plan, nor was any created. As Eggleston has pointed out (p. 200), "When work began on the Master Plan not a single one of the municipalities in the capital region had 'land use plans' or effective zoning plans. Vis-a-vis the local authorities, the Federal District Commission possessed only the power to advise and persuade. Lacking direct control, the Commission had to seek to attain its objectives by oblique and indirect means."

Yet when the Plan was presented in 1950, the Ottawa metropolitan area was on the verge of one of the most dramatic periods of urban expansion that it had ever seen. Since there existed no adequate machinery to control this development, the result was urban sprawl on both sides of the Ottawa river, and inevitably developments that went contrary to the Plan. The most striking example of this was in the Township of Nepean. For financial reasons developers tended to jump beyond the new boundaries of the City and even into the proposed Greenbelt. Nepean had a population approaching 25,000 in 1949. When the annexation was complete Nepean was left with an almost exclusively rural population of only 2,500. Yet in the next five years the outflow from the city again raised the population to 8,000 largely urban. The Township of Gloucester showed a similar pattern. Its population was cut from 10,000 to 5,000 by the

annexation, but by 1956 its population had again jumped back to 11,500. Indeed the pace of urban subdivision in the proposed Greenbelt proceeded so fast that it forced the federal authorities to redefine the Greenbelt and to extend its inner boundary, making it in places even farther from the boundaries of the City. The fact was that the Greenbelt was nothing more than an attractive dream drawn on a map, and it would never be realized unless something were done quickly.

The difficulty, inherent from the beginning, was a genuine conflict of interest between the federal and local governments in the area. While the Federal Government was interested in developing a national capital worthy of Canada, the local governments were, individually, incapable of meeting this challenge, especially since the financial burdens fell upon them unequally. There was a similar but lesser conflict of interest between the federal and provincial governments in implementing the plan. So long as the provincial governments remained responsible to their electors in the national capital area, they could not be expected to turn a deaf ear to representations from local citizens desiring action contrary to the Plan. Nor could they be expected to have any very positive incentive to create the governmental and planning machinery that would be necessary to enforce the Plan.

As a result of these difficulties another parliamentary Joint Committee was appointed in 1956, and the evidence given before that Committee well illustrates this conflict of interests, especially regarding the preservation of the Greenbelt. "Unlike a zoning by-law, which is for the general benefit

of persons within the zoned area, a Greenbelt, if it has any benefit, is for the benefit of those outside the zones area, is for purposes wholly dissociated with the enhancement of the value of the ratepayers' property," the Reeve of Nepean told the Joint Committee. "A municipal council is only the instrument of its ratepayers and it is wholly beyond the realm of practicability to expect any municipal council so to act in direct opposition to the interests of its ratepayers. If some overall national policy requires a Greenbelt, with which suggestion Nepean does not agree, then the national government must adequately compensate the Nepean ratepayers. Certainly, it must not expect the Nepean Council under the phony excuse of 'zoning' to deprive its ratepayers of the present values of lands which they and their forefathers have held for generations."⁷ Reeve Moodie might also have admitted, had he been pressed, that neither did it wish to deprive its ratepayers of future values which might result from subdivision.

In her evidence to the Committee, Mayor Charlotte Whitton of Ottawa explained the failure of the Ottawa Planning Area Board to prevent undesirable development:

In cases where subdivisions are proposed far in advance of normal development the Ottawa Planning Area Board has refused to recommend approval. In these cases, an appeal to the Ontario Municipal Board is open to the developer, and, unfortunately, most of the appeals which have been taken have succeeded and the Ontario Municipal Board has recommended to the Minister of Planning and Development the approval of the plan of subdivision, notwithstanding the opposition of the Ottawa Planning Board. This is a result which the City deplores, but which it is powerless to prevent...

The Ottawa Planning Area Board has, with four exceptions, three of which were insignificant, consistently refused to approve of urban-type subdivisions in the area designated as a rural-urban zone (Greenbelt) by the Ottawa Planning Area Board. Here again, appeals have been taken by developers to the Ontario Municipal Board, and that Board, refusing to recognize the rural-urban zone as having any special character, has on several occasions approved of large urban-type subdivisions in this transition area.⁸

While there was a special conflict of interests between the Federal Government and Ottawa on the one hand, and the outlying municipalities and the Government of Ontario on the other, there was also a normal and natural conflict of interest between the Federal Government and all of the municipalities in the area, as explained by Mayor Whitton. She pointed out that the National Capital Plan involved changing the actual physical setting and development of the community but that this could not be done to the disregard of the overriding responsibility of the municipal authority to the people of the community:

The fact of Ottawa, the city, a community, almost half a century older than Confederation and fully a century older than the "National Capital Plan", cannot be set aside. The zones of its business and commerce, its residential areas - luxury, average, mediocre and sub-standard - cannot be ruthlessly dealt with on the lines of a blueprint or an overall plan or sudden sweeping zoning and rezoning.

The reality of living, the rights of ownership, the relationship of the homes, the churches, the schools, the stores and services, the community's recreation resources, both commercial and otherwise, their eating places, in short all of the pattern of their living must be seen through the "overlay" as it were of what the planners may dream, may desire, may work towards, but only in justice and consideration of what is, as well as what may be. It can all be very frustrating, but it is important to distinguish whether it is the slower, surer, safer processes of a self-governing democracy at the level of its people's local government, or a culpable indifference or non-co-operation which explains the gradualness of development and change among the municipalities which are practically all no less

anxious than any especially constituted mechanism of the national government, to justify and realize their dignity as part of the national capital area.⁹

The Committee of 1956 devoted a good deal of its report to the problems of divided jurisdiction and conflict of interest, but it did not feel, as did the Committee of 1944, that the proposal for a federal territory should be studied. It probably felt that the Federal Government was already too heavily committed to a program of voluntary co-operation with the provincial and municipal governments concerned. It felt that there was still a reasonable hope of achieving the objectives of the Plan through such co-operation, especially if the Federal Government were prepared to spend enough money in a program of assistance to the local municipalities and of control over the use of land through purchase or expropriation.

The pertinent paragraphs from the final report regarding the problems of divided jurisdiction are as follows:

The proposed National Capital area includes portions of the Provinces of Ontario and Quebec. It is superimposed upon certain municipal organization within each Province. As the Plan is brought to fruition works must be undertaken which affect the sphere of provincial or municipal responsibility. But because they are conceived as part of a scheme for the creation of a national rather than provincial or municipal development, these works may be more elaborate than would be required for provincial or municipal purposes. Again, since they are to be installed within populous municipalities, they have a bearing upon the works required by these municipalities for their own development. Sometimes, as in the case of driveways and parkways, they add improvement which the municipality would not install, or if it were installed, it would be installed upon a more modest scale. At other times the creation of the work of the National Capital imposes upon the municipality concerned the burden of additional services or the building of works of greater magnitude than the municipality alone might undertake.

For the resolution of these conflicts, co-operation between the three levels of jurisdiction is essential. Hitherto, the emphasis is upon co-operation between the Federal District Commission and the municipalities concerned. A greater measure of integration of planning with the provincial authorities should emerge...

It seems not too much to say that Ontario municipalities have an onus cast upon them to avail themselves of the provisions of (the Ontario Planning) Act, and to establish long-range and far-reaching plans for their future development thereunder. Even if Ottawa were not a Federal Capital it might still be expected that the municipal corporations in the area should invoke the provisions of the Act.

But for the Ottawa area more is available, namely the National Capital Plan. It is not imposed on the area by any Statute which superimposes upon the City and its environs an additional plan for beautification over and above any municipal plan. As we see it, this National Capital Plan should be developed as far as possible without assuming obligations proper to the Province or the municipalities concerned. Sometimes it is difficult to draw the line...

We think that the realization of the National Capital Plan must imply the co-operation of federal, provincial and municipal authorities. In many respects such co-operation is not wanting; in others there is much to be desired. We believe that a series of local demands by individual municipalities or groups of municipalities is no substitute for the reasoned provisions of the National Capital Plan.

The Committee is of the opinion that the over-all plan of the national capital should be submitted to both the Ontario Minister of Planning and Development and the Quebec Minister of Municipal Affairs. This, if agreement is possible, should be regarded as the background against which all individual cases should be dealt with as they arise. At the same time, we think that an appropriate representative of the Government of Canada should consult with the above provincial authorities in view of determining ways and means of implementing the Plan, and we feel that this could be achieved in such a way that it would be fair to all concerned.¹⁰

Regarding the problem of preserving the Greenbelt, the Committee stated:

Evidence given to the Committee warrants our hope that some workable arrangement could be made with the municipalities

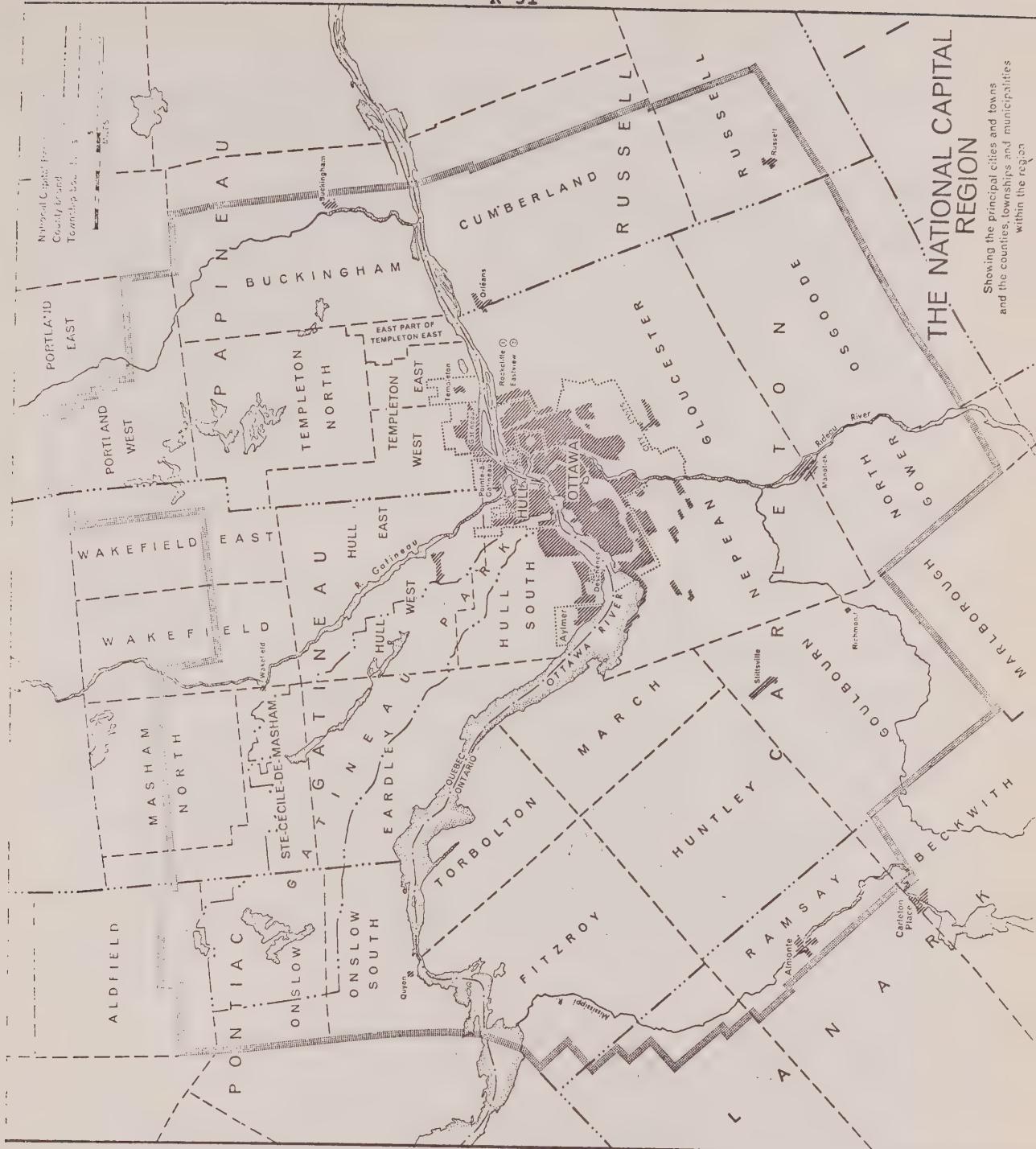
concerned. The Federal District Commission is willing to try to work out a compromise. We urge that an attempt be made to solve the differences. However, should these negotiations fail, resort might be had to the Minister of Planning and Development for Ontario. It might be possible to invoke the provisions of the Planning Act of Ontario, either as drawn or under suitable amendments, to provide for the special circumstances arising in the National Capital area and arising particularly out of the recommendations contained in the National Capital Plan of 1950. We would suggest that this avenue be explored before an expropriation program proceeds.¹¹

This plea for co-operation from the provincial and municipal governments was apparently unsuccessful, and if any further time had been lost in trying to secure co-operation the battle to preserve the Greenbelt would have been lost. In 1958, therefore, the Federal Government decided to proceed with a program for the Federal District Commission to purchase or appropriate all the land necessary to preserve the Greenbelt. It also implemented two other recommendations of the 1956 report. A new National Capital Act was passed changing the name of the Federal District Commission to National Capital Commission, and the National Capital District was officially renamed the National Capital Region and doubled in size (from 900 square miles to 1,800 square miles, most of the increase being on the Ottawa side of the river; see map). The Region now took in all or part of 66 municipalities in Quebec and Ontario. This of course further complicated the problem of divided jurisdiction.

At the same time, the new Act removed the mayors of Ottawa and Hull from the Commission. Instead it specified that, of the twenty commissioners, the Governor-in-Council must appoint one from each of the provinces and a minimum of two local residents from Ottawa, one from Hull, and two others -

THE NATIONAL CAPITAL REGION

Showing the principal cities and towns
and the counties, townships and municipalities
within the region



ADMINISTRATIVE BOUNDARIES WITHIN THE NATIONAL CAPITAL REGION, 1959

Source: W. Eggleston, The Queen's Choice (Ottawa, 1961), p. 291

from the other municipalities on each side of the Ottawa river. Since 1958, local representation on the Commission has customarily consisted of four residents of Ottawa, two others from the Ottawa side of the river, one from Hull and one from the Hull side of the river. Also, the National Capital Committee was discontinued and the Commission was given the direct power "to prepare plans for and assist in the development, conservation and improvement of the National Capital Region in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance."

The financial resources of the Commission were also greatly enlarged. From now on the Federal Government would attempt to solve the problem of divided jurisdiction with money - through massive purchase and expropriation of property, by paying the full cost of many projects vital to the success of the Plan, sharing a large proportion of the cost of many others, and by providing free technical help and advice on planning and other matters to the municipalities in the Region.

IV. RECENT PROGRESS AND FUTURE DIFFICULTIES

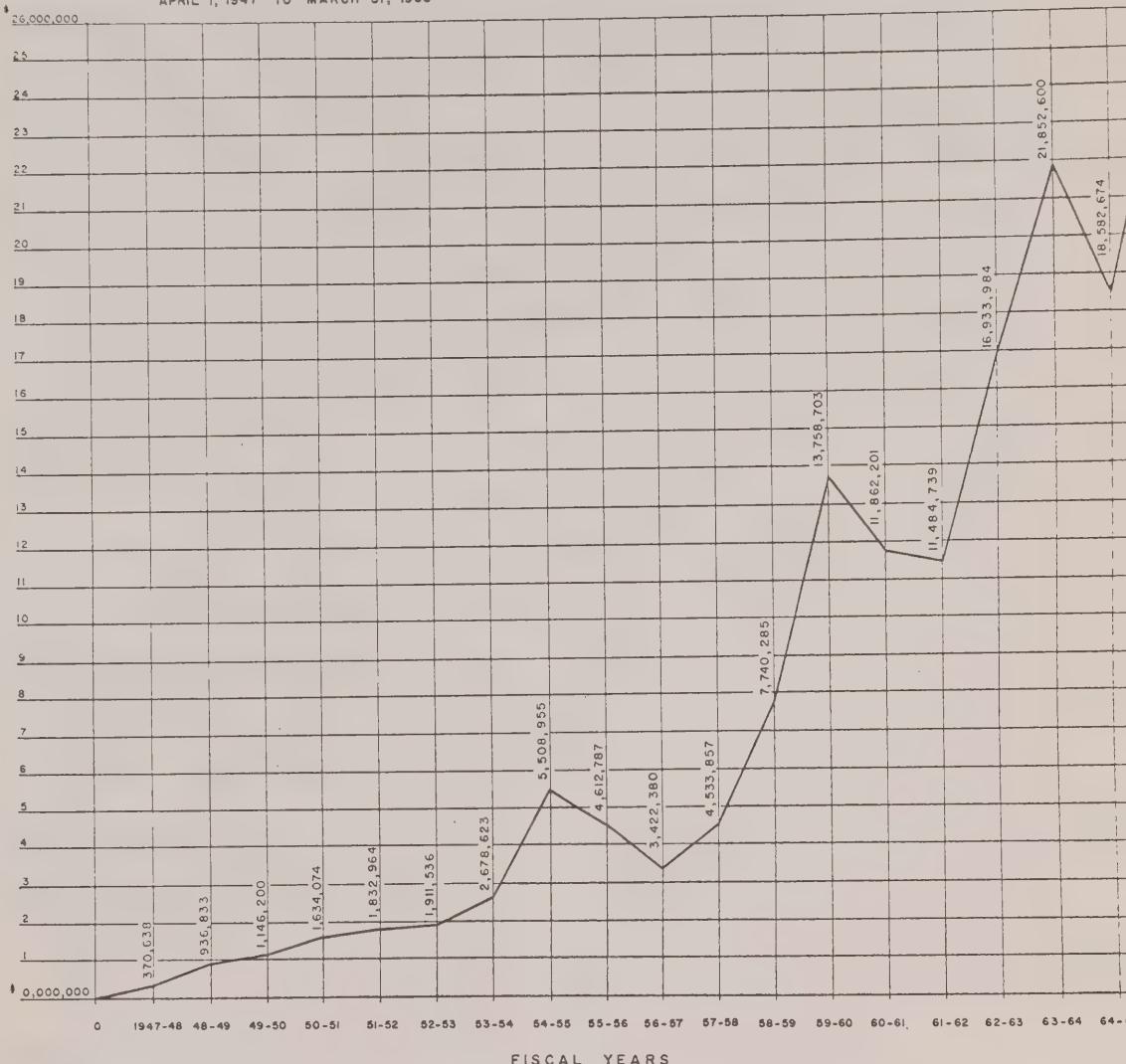
Since the Federal Government's decision in 1958 to provide a massive increase in its financial support for the National Capital Plan, great progress has been made in implementing the main provisions of the Plan. The annual report of the National Capital Commission for 1965-66 shows that between April 1, 1947, and March 31, 1966, it spent a total of \$156 million for development and improvement within the National Capital Region (see chart). Of this total it spent \$87.8 million on property acquisitions, including \$34.4 million for the Greenbelt, \$16.7 million for LeBreton Flats, \$5.5 million for Gatineau Park, \$4.9 million for Sussex Drive, \$4.3 million for the Queensway, and \$4.3 million for the Ottawa River Parkway. On other projects of its own it spent \$19.8 million, of which \$7.1 million was for Gatineau Park, \$4.6 million for the Ottawa River Parkway, and \$4.9 million for other parks and parkway projects. It also spent \$20.2 million on the relocation of the railway facilities and \$1.4 million on the construction of the Mackenzie King bridge.

On projects requiring the sharing of expenditures with Ottawa or other local municipalities and in some cases also with the provincial governments, the Commission spent \$13.4 million or about 9% of its total expenditures. This included grants of \$2.8 million to Ottawa for the construction of sewers and water mains in advance of need, \$5 million to Ottawa for the construction of a sewer to the new sewage disposal plant at

NATIONAL CAPITAL COMMISSION

EXPENDITURES FOR DEVELOPMENT AND IMPROVEMENT WITHIN THE NATIONAL CAPITAL REGION

APRIL 1, 1947 TO MARCH 31, 1966



Source: National Capital Commission, Sixty-Sixth Annual Report, 1965-1966,
Part Two.

Green Creek, \$1.2 million for the reconstruction of Riverside Drive, \$1 million for the construction of the Bytown bridges and improvements to Sussex Drive, \$1.7 million for construction and approaches of other bridges, \$160,000 to Nepean Township for a new sewer and sewage disposal plant, and \$312,000 for research, studies and other types of assistance.

There is little doubt that its contribution to local governments for research and other technical assistance was money well spent, for it has stimulated the local municipalities and the two provinces to take some of the action necessary to implement their share of the Plan. The staff of the Commission, which now numbers about 750, including professional engineers, architects and planners, have also been generous in their provision of technical assistance and advice. Thus, the Commission has tried to follow the recommendation of the Committee of 1956 that the municipalities and the provinces should be brought more closely into the arrangements for implementing the Plan.

Examples illustrative of the Commission's assistance, advice and co-operation are given in its annual report for 1964-65. On the Ottawa side of the river, it was represented on the Ottawa Planning Area Board and on the City and County technical advisory committees of the Board. In Ottawa it was represented on the Building Appearance Committee and the Joint Staff Committee for the Urban Renewal Study. Statistical data were provided to Eastview for official plan studies, and representatives of the Commission attended preliminary

discussions for the preparation of an urban renewal study for Eastview. In Gloucester, representatives of the Commission, acting as advisers to the Township Planning Board, assisted in the preparation of a proposed Official Plan for the northwestern part of the Township that lies within the Greenbelt.

Representatives of the Commission also discussed with the Council and Planning Board of Cumberland Township the need for a planning program, and assistance was given in the preparation of a proposed Official Plan for part of the Township near Orleans, which is likely to undergo urban development. For the Township of March, the Commission agreed to prepare a plan of land use as a guide for the revision of the existing zoning by-law. Officials of the Commission had discussions with the Planning Board of the Village of Stittsville on the need for an Official Plan for the community, and the Commission agreed to assist in its preparation. On the north side of the river, the Commission was represented on the General Planning Committee for the City of Hull and its Environs, and on its sub-committees. The Commission was also represented on the planning committee engaged in the preparation of a Master Plan for the Towns of Gatineau and Pointe Gatineau and their adjacent six municipalities. The Commission prepared a brief outlining the projected growth in that area and also made a financial grant to assist in the work.

The Commission has also tried to bring the local municipalities and the provinces more directly into the planning process for revising the National Capital Plan. A notable

achievement in this respect was the Ottawa-Hull Area Transportation Study of 1965. Although it was prepared by two private joint-venture firms for the City of Ottawa, these firms were assisted by a technical co-ordinating committee chaired by the City's Director of Planning and Works, but with representation from - besides Ottawa and its transit commission and parking authority - Hull, Eastview, Ontario, Quebec, the National Capital Commission, the Ottawa Suburban Roads Commission, the County of Carleton, and the Canadian National and Canadian Pacific Railways. The Study made proposals for a major thoroughfare pattern for Ottawa-Hull and the rest of the National Capital Region over the next twenty years. It is significant that all of the municipalities affected by the proposals have adopted them in principle.

There is no doubt that the Government has managed to overcome many of the difficulties of divided jurisdiction through its program of massive land acquisition and co-operation with and assistance to the provincial and local governments. By 1966, the major projects contained in the Greber Plan of 1950 had been successfully completed or were well on the way to completion. The Greenbelt had been saved, the Queensway had been built, the railways were being relocated, opening the way for many improvements in the downtown area of Ottawa, the parkway system and the development of Gatineau Park were almost complete, and many of the key bridges had been built.

This had not been accomplished, however, without considerable dissatisfaction and complaint on all sides - from

the local municipalities, from groups of local citizens, and from the Federal Government. The removal in 1958 of the representatives named by the Cities of Ottawa and Hull to the Federal District Commission meant that the local municipalities in the area had no direct representation on the National Capital Commission. Formerly they had also had representation on the National Capital Planning Committee, but under the new arrangement they are not represented at the federal level for purposes of either implementing or revising the National Capital Plan. Not surprisingly, there were some rather bitter comments from the local municipalities regarding this change, especially since the National Capital Commission was still represented on the Ottawa Area Planning Board. Similarly, the expropriation program led to a good deal of opposition, especially in the Greenbelt. The Expropriation Act had not been revised, as recommended by the 1956 Committee, to ensure that procedures were scrupulously fair, and complaints were made that the National Capital Commission was acting arbitrarily and without regard to the rights of local citizens. In fact, one of the land owners in the Greenbelt even brought an important test case before the Exchequer Court questioning the constitutional right of the Federal Government to expropriate land for the purpose of preserving a Greenbelt on the ground that this interfered with provincial powers over property, civil rights and, in particular, zoning. This case was appealed to the Supreme Court of Canada, and was recently decided in favour of the Federal Government because expropriation for the purpose of implementing the National Capital Plan comes under its general power to make

laws for the "peace, order and good government of Canada."¹²

On the other hand, the Federal Government is now pouring millions of dollars into the centre of the Region in the form of development projects, joint sharing of development, and grants in lieu of taxation to the Cities of Ottawa and Hull; yet it has no direct control over or representation on any of the local councils which would give it a chance to help to determine how this money will be spent. As already noted, the National Capital Commission had spent \$156 million in the Region by April of 1966. Also, by 1964 the municipalities in the Region were receiving about \$6.6 million annually from federal grants in lieu of taxation. The largest recipients were Ottawa (\$5.7 million), Hull and its school commission (\$500,000), Gloucester (\$90,000) and Nepean (\$80,000).¹³ Ottawa got by far the largest grant in Canada, the next largest being Halifax (\$1.7 million), Toronto (\$1.6 million), North York (\$1.6 million) and Montreal (\$1.4 million). In 1966 Ottawa will receive for its current budget \$8.4 million in federal grants, about 23% of its own City budget (but only about 9% of the City's current gross expenditure requirements, including schools, compared with 19% from provincial grants, 42% from taxes, and 30% from other sources). In addition, between 1966 and 1970 the City expects to receive \$15 million in federal grants toward its capital budget.¹⁴ Impressed by these contributions to the city, Hon. George McIlraith, President of the Privy Council and M. P. for an Ottawa constituency, proposed in 1964 that the federal government should be represented on Ottawa's City Council.

Paul Tardif, M. P. for Russell and for many years a member of Ottawa's Council, endorsed this suggestion. The reaction of the Council was to reject the idea vigorously and to demand City representation on the National Capital Commission instead. ¹⁵

That the difficulties of divided jurisdiction have by no means been overcome may be illustrated by three examples. The parliamentary Committee of 1944 had stressed that the pollution of the Ottawa river was already serious, and the Committee of 1956 had placed this as the number one priority on its list of problems to be solved. Yet in 1966, over twenty years later, some ten million gallons of raw sanitary sewage are dumped into the Ottawa river in the capital area every day. ¹⁶ The municipalities on the Quebec side are the worst offenders, since most of them have no sewage treatment whatsoever. In addition, tons of industrial wastes are discharged into the river daily from the pulp and paper mills of the E. B. Eddy Company and the Canadian International Paper Company. Since Hull has had to give priority to a water filtration plant, it has no immediate plans for sewage treatment. Yet it dumps six million or more gallons of raw sewage daily. The situation on that side of the river has been well illustrated by Rusins in the accompanying cartoon from the Citizen. But even on the Ontario side the first sewage disposal plant was not installed until 1962. With help from the National Capital Commission, Nepean installed a treatment plant in 1962, and Ottawa did likewise in 1963. However, the Nepean plant is now overloaded and periodically discharges an overflow of raw sewage into the

river, and the City's plant does not remove all of the pollutants from the sewage. About 35% of solid matter and 65% of biochemical pollutants remain in the estimated 36 million gallons of sewage treated daily.

The second example is a minor but typical recent one arising out of the relocation of Ottawa's Union Station to the east side of the city, beyond Hurdman's Bridge. When the new station opened in August, 1966, no provision had been made for bus service. The Ottawa Transportation Commission and Mayor Reid took the view that, since the new bus service would involve a heavy loss for the O. T. C. and the station had been moved at the insistence of the National Capital Commission, "that makes it their responsibility to make sure there is public transportation to the new site."¹⁷ In this case, divided jurisdiction had left visitors and residents with no bus service closer than the three blocks to the Union Station, and this distance was across a rough construction site.

The third example, a more serious one, is the implementation of the freeway and street plan proposed in the Ottawa-Hull Urban Transportation Study. This plan, which involved the technical co-operation of all three levels of government, was prepared by private firms under a contract with the City of Ottawa. It was not produced by the National Capital Commission as part of the National Capital Plan. Yet it is revolutionary in its proposals for the construction of a new freeway system and the reconstruction of a good deal of downtown Ottawa, involving fundamental revisions of municipal Master Plans and of the National Capital Plan. The

fragmentation of municipal responsibility in the area is such that, although the main municipalities concerned approved the plan in broad principle, what assurance is there that they will adhere to the plan? "In terms of transportation needs," as the Study notes, "the Study Area (which included 13 municipalities in Ontario and 15 in Quebec) functions as an entity Should one body wish to alter the detail of the plan in any way, all the other participants must be given the opportunity of assessing the consequences, both in terms of their own responsibilities and in terms of effectuating the total plan for the benefit of the entire Study Area.¹⁸ Moreover, the cost will be tremendous, requiring \$435 million over the next twenty years. Of this, \$103 million will be needed in Quebec and \$332 million in Ontario, with expenditures in Ottawa alone accounting for \$226 million, or over half the total. The second question, then, is: who is going to pay for this redevelopment? Since the Federal Government did not produce the plan, the temptation for it to disclaim financial responsibility will be great.

Despite the impressiveness of the national capital projects completed to date, and despite considerable private rebuilding of Ottawa's business core in recent years, parts of the centres of Ottawa and Hull still remain a disgrace to the nation. "To apply cosmetics to the decayed body of a disorganized city," as Wilfred Eggleston notes (p.280), "will not achieve the purpose for which the (National Capital) Commission exists." Nor has the existing planning machinery prevented a great deal of uncontrolled and undesirable urban sprawl, which still continues

beyond the boundaries of Ottawa and Hull. Unfortunately, the plain facts are that, constitutionally, the National Capital Commission cannot control development or redevelopment on land that it does not own; that the planning, land use and zoning controls by the local municipalities in the area are in many ways still unsatisfactory; and that the Provinces of Ontario and Quebec and the Cities of Ottawa and Hull are not prepared to pour the amount of money into urban and road redevelopment that would be necessary to create a capital worthy of Canada's growing stature as a nation.

It is now over more than fifteen years since the National Capital Plan was published; yet only bits and pieces of it are fully in effect in the form of legally enforceable official Plans. It is true that Ottawa now has a comprehensive zoning by-law, approved in 1965, and that the Ottawa Planning Area Board now has a Master Plan for procedures, roads, parks and land use, approved in 1963. But the parks and land use sections apply only within the boundaries of Ottawa. The other municipalities in the Region either have no plan, bits and pieces of a plan, or a general plan which may or may not be officially approved or conform with the National Capital Plan.

The accompanying chart, prepared by the Ontario Department of Municipal Affairs, reveals that at the end of 1964 - fourteen years after the approval of the National Capital Plan - of the twenty-one Ontario municipalities in the National Capital Region, Ottawa was the only one that had a Master Plan officially approved by the Ontario Government. Although Ottawa also had a

complete zoning by-law, it had only partial sub-division control. The four others in the Ottawa urban area (Rockcliffe, Eastview, Gloucester and Nepean) had complete zoning by-laws but only partial Official Plans, and only Gloucester and Nepean had complete sub-division control. The other three townships that come under the Ottawa Planning Area Board (Fitzroy, March and Torbolton) had neither Official Plans nor complete zoning by-laws. Of the thirteen municipalities not under the Ottawa Planning Area Board, none had Official Plans and only the Villages of Richmond and Stittsville had complete zoning by-laws.

The situation is much the same on the Quebec side of the river. With help from Central Mortgage and Housing Corporation, Hull had a general plan for urban renewal prepared in 1962. And with help from the federal and provincial governments, Hull plus the four other municipalities west of the Gatineau river co-operated to have a master plan produced in 1964. But under Quebec law no provision exists for provincial approval of a town, city or regional plan, so these plans have no official status. The master plan has not even been approved by the co-operating municipalities. It is regarded as nothing more than a guide. None of these municipalities has adequate zoning by-laws. A master plan study is now being prepared, with help from the federal and provincial governments, for the eight municipalities east of the Gatineau river, but when it is completed it similarly will have no official status.

The successful completion of the major projects contained in the 1950 Plan means that planning in the area is now entering a new phase of redeveloping the urban cores of Ottawa and Hull -

**A SUMMARY OF PLANNING STATISTICS FOR THE NATIONAL
CAPITAL REGION (including 21 Municipalities in the
Counties of Carleton and Prescott-Russell)**

| Municipality | Planning Area | | Zoning By-law | Committee of Adjustment | Subdivision Control | |
|----------------------------|-------------------|------------------|------------------|----------------------------|------------------------|-------|
| | Planning Board | Official Plan | | | Complete | Part. |
| Town of Rockland | — | — | — | — | — | X |
| Village of Casselman | — | — | — | — | — | — |
| Twp. of Cumberland | S.I. | — | — | X | — | X |
| Twp. of Clarence | — | — | — | — | — | — |
| Twp. of Cambridge | — | — | — | — | — | — |
| Twp. of Russell | — | — | — | — | — | — |
| Village of Richmond | — | — | X | — | — | — |
| Village of Rockcliffe Park | J. | partial | X | — | — | — |
| Village of Stittsville | S.I. | — | X | X | — | X |
| Twp. of Fitzroy | J. | — | — | X | — | — |
| Twp. of Gloucester | (J) Sub. | partial | X | X | — | X |
| Twp. of Goulburn | — | — | — | X | — | X |
| Twp. of N. Gower | S.I. | — | — | X | — | X |
| Twp. of Huntley | — | — | — | — | — | — |
| Twp. of March | J. | — | — | X | — | X |
| Twp. of Marlborough | — | — | — | X | — | — |
| Twp. of Nepean | J. | partial | X | — | — | X |
| Twp. of Osgoode | S.I. | — | — | X | — | X |
| Twp. of Torbolton | J. | — | — | X | — | X |
| City of Ottawa | J. | X | X | — | — | — |
| City of Eastview | (J) Sub. | partial | X | X | — | — |

J. — Joint Ottawa Planning Area Board

S.I. — Single, independent Planning Board

Sub. — Subsidiary Planning Board

Source: What's New in Planning (Bulletin of the National Capital Region Branch, Community Planning Association of Canada), No. 7 (May, 1965), p. 19.

a process which will touch the lives of businesses and citizens of Ottawa and Hull much more closely and is likely to lead to renewed friction. Moreover, the unexpectedly rapid expansion of population in the metropolitan area since the war has made the Plan of 1950 in many ways out of date. Since this rapid expansion is likely to continue indefinitely into the future, the Plan must be continuously revised. This raises the difficulty - in addition to the old problem of how to implement the Plan - of how to revise it so that it will be acceptable to the local authorities and citizens. They have no direct representation on the National Capital Commission, the federal body now charged with revising the Plan.

Recent urban growth in the area has been so great that it will require a change of Greber's original concept of an urban centre surrounded by a Greenbelt with only small satellite towns beyond it. The Greber Plan had projected that the urban population of the national capital area would reach 500,000 by 1980, but this population figure was reached in 1963. The growth has been so marked that between 1956 and 1961 Ottawa-Hull was the fastest growing metropolitan area in eastern Canada and third in Canada, exceeding even Toronto (see chart). The most recent prediction is that the National Capital Region will have a population of over 800,000 by 1980, and possibly a million by the year 2,000. It will soon contain as big a population as any of the Atlantic provinces.

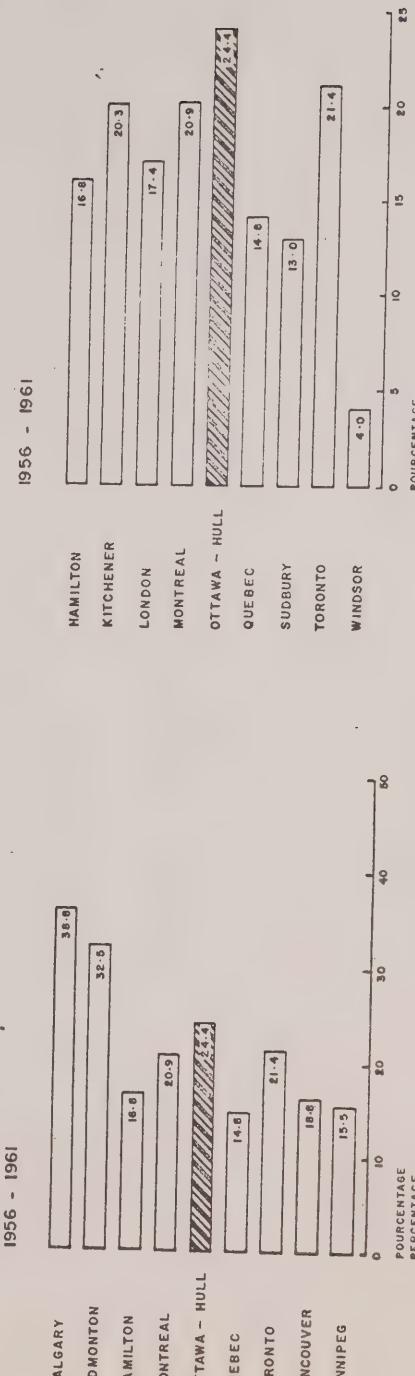
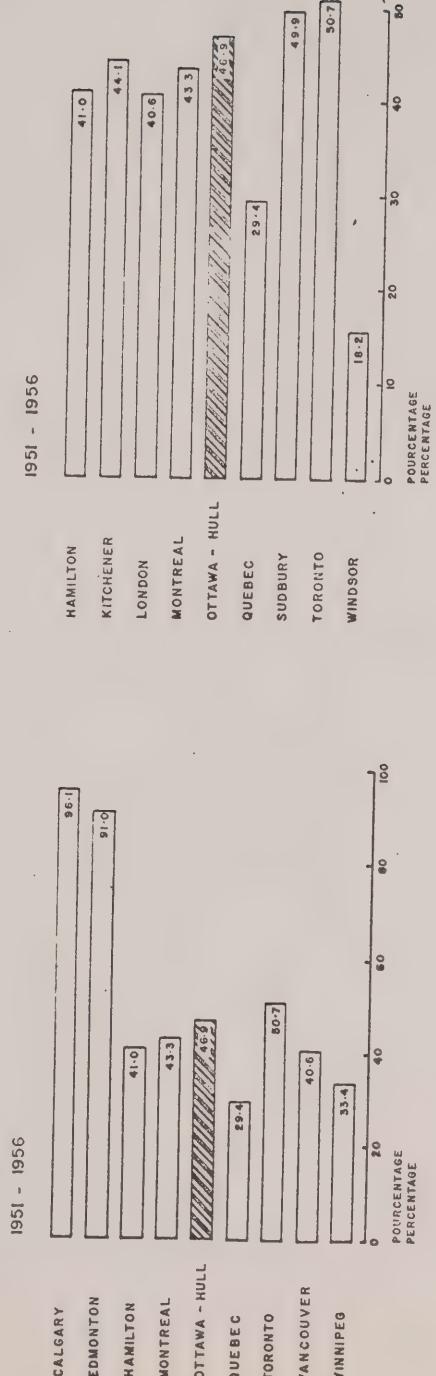
As shown on the accompanying map, studies of the future urban growth pattern made by the technical co-ordinating committee for the Ottawa-Hull Area Transportation Study indicate that this growth will take place in three specific areas to the west, south and east of the Greenbelt on the south side of Ottawa, and in two large areas north of Ottawa on the west and east sides of the Gatineau river. By the year 2,000 Ottawa's population may reach 540,000 and the present Aylmer-Hull urban area will be about 160,000. The populations of the four new satellite cities will also be large. Indeed, the one to the west of the Greenbelt may be larger than Aylmer-Hull, with an estimated 180,000, while the ones east of Hull and south of the Greenbelt are likely to have about 120,000 each. The percentage distribution of the population is likely to be about as follows: 38% within the Greenbelt, 40% beyond the Greenbelt on the Ontario side of the river, and 22% on the Quebec side.¹⁹ Since the residents of the whole metropolitan area will depend for their employment mainly upon the Federal Government, a large proportion of them will travel to work in the urban core on high-speed traffic arteries. This situation, as shown on the second map, will be considerably different from Greber's vision of small self-contained satellite towns far beyond the Greenbelt.

The projected speed and pattern of this urban development will soon require, for its effective control, a reorganization of local governments in the Region more fundamental than that which took place in 1950 through Ottawa's multiplication of its area by five times in an attempt to control urban development within the proposed Greenbelt. The present existence of the

LE GOUVERNEMENT DU CANADA : LE RECENSEMENT FÉDÉRAL DE LA POPULATION ET DES ÉTABLISSEMENTS EN 1961 : ZONES MÉTROPOLITAINES ET COMMUNITÉS CÉNÉSÉES - ÉTAT DES UNITÉS

ZONES MÉTROPOLITAINES DE 250,000 HABITANTS ET PLUS
METROPOLITAN AREAS WITH A POPULATION OF 250,000 AND OVER

ZONES MÉTROPOLITAINES DU QUÉBEC ET DE L'ONTARIO
METROPOLITAN AREAS OF QUEBEC AND ONTARIO



SOURCE OF CHART: MASTER PLAN FOR HULL, AYMER, HULL SOUTH, DESCHENES, HULL WEST (Part 2), p. 15
ZONES MÉTROPOLITAINES SELON LA DÉFINITION DU BUREAU FÉDÉRAL DE LA STATISTIQUE
SOURCE - RECENSEMENT DE 1961

METROPOLITAN AREAS AS DEFINED BY THE DOMINION BUREAU OF STATISTICS
SOURCE - 1961 CENSUS

Greenbelt, and the expectation that the new urban areas in the south will be established along widely separated traffic arteries and that urban Hull will grow rapidly and split into two big urban areas separated by the Gatineau river, mean that simple annexation and integration of governmental services will no longer be the answer. It is clear, as it was before 1950, that the full implementation of a comprehensive plan for a metropolitan area requires a governmental authority over the area which has control over all the services of local government that have relevance to planning and development. Except for Ottawa, the existing local governments cannot provide the finances, expertise and control necessary to make them viable units for implementing a national capital plan or even a desirable metropolitan plan.

For this reason, the idea of a basic reorganization of the local governments on the Ontario side of the Ottawa river has been gaining ground. The local municipalities have no doubt been influenced in this respect by the successful creation of second-tier metropolitan authorities in Toronto and Winnipeg, which govern the whole metropolitan area for certain purposes but have not destroyed the existing municipalities in the area. In 1964, the Government of Ontario, which has been initiating studies of urban regions upon local request, appointed Murray Jones to study the problems of local government in the Ottawa region over an area somewhat smaller than the Ontario side of the National Capital Region (sixteen versus twenty-one municipalities). One wonders why the boundaries of the study area and Region could not have been made to correspond. Mr. Jones had formerly been Director

of Planning for the Toronto metropolitan authority and was now a consultant on municipal problems. Most of the municipalities in the study area and a number of individuals presented briefs at his hearings, and most of them agreed that a reorganization of local government was necessary. Many thought that some new form of metropolitan government was the answer, but there was not much agreement on what shape this new structure of government should take.

One of the main findings of the Jones Commission Report, published in 1965, was that the municipalities in the study area show a great variation in their standard of services and in their ability to raise revenue for these services. In order to provide a more uniform standard of services and revenues and to control future urban development, he therefore recommended the abolition of all existing municipalities, boards, and commissions, except school and hospital boards, and the creation instead of a centralized regional council which would control beneath it a system of urban and rural nine-member district councils to administer purely local affairs. The urban districts would each have about 30,000 population. There would also be several development districts on the urban fringe which would later become urban districts. The boundaries of the districts would not correspond with existing municipalities. Although the Jones proposal may have been ideally desirable from the point of view of efficient administration, it would have been too great a break with the past, involving as it did the abolition of the existing local authorities. Their reaction

was one of almost universal opposition. Eastview feared that its French-speaking majority would be swallowed by the plan. And since the proposal would even have required carving up Ottawa into districts, Ottawa's Council also rejected the scheme. Instead it supported a counter-proposal which it had presented to the Commission: that the City should annex Rockcliffe Park, Eastview and the parts of Nepean and Gloucester that lay within the inner boundary of the Greenbelt, and that Carleton County should be strengthened, perhaps by being incorporated as a city. Ottawa and the County would have over them either a general planning body or a weak metropolitan authority which might control a few metropolitan-wide services.

Constitutionally, the reorganization of local government in the Ottawa metropolitan area requires action by the Government of Ontario. Since it is unlikely to take action without the agreement of either the City of Ottawa or most of the other municipalities in the area, the Jones proposal is not likely to be implemented. Since no other proposal has been made which appears to be both viable and acceptable, a reorganization is not likely to take place for some years.

A basic flaw in the Jones investigation, because of the constitutional and political limitation upon its terms of reference, was its failure to include the Hull metropolitan area. Even if reorganization should occur on the Ottawa side, the problems of a unified governing authority for the Hull side and for the whole Ottawa-Hull area still would not be solved. On the Hull side, the same need for reorganization exists.

The present and potential Hull urban area is split up among four municipalities west of the Gatineau river (Hull, Lucerne, Deschenes and Aylmer), and at least four east of it (Gatineau Point, Templeton-West, Gatineau and Templeton). Among these municipalities the usual problems of lack of co-operation arise. Lucerne, for example, fears that part of it will be swallowed by Hull, or that Hull will gobble up the whole potentially urban area west of the river. To avoid too intimate association with Hull, Lucerne recently had its name changed from Hull South to its present name, and has made overtures to Aylmer and Deschenes for an amalgamation with them as a sort of counter-balance against Hull.²⁰ But no move has been made yet by either the local governments in the Hull area or the Quebec Government to create any sort of metropolitan authority.

The conclusion seems to be inescapable that a fundamental reorganization of the municipalities on both sides of the river that are slated for future urban development will soon be desirable. Yet this is not likely to be achieved effectively by the independent action of two different provincial governments and two different sets of municipalities on each side of the river. It could be achieved by the Federal Government if it had undisputed jurisdiction over the National Capital Region. The Federal Government could achieve this without even abolishing the existing municipalities, by creating a superior governing authority for the whole Region. From the point of view of effectively developing and governing the

national capital of the future, therefore, the time appears to be more opportune than in any period since Confederation to reconsider the proposal for a federal territory.

V. THE BILINGUAL-BICULTURAL ISSUE

Until recent years the National Capital was thought of mainly in terms of physical development - as an efficient place for Members of Parliament and civil servants to work and live, and as an impressive place worthy of a capital city for Canadians and foreigners, such as heads of national organizations, journalists, and representatives of foreign governments, to visit, conduct their business and reside. Not much attention was paid to the development of the National Capital as a symbol of the successful uniting of Canada's two main ethnic groups into a single nation. Ottawa remained predominantly an Anglo-Saxon city in an English-speaking province.

From this point of view, Montreal might have been a better choice as the federal capital. It is interesting to recall that for a short period before Confederation, from 1844 to 1849, Montreal had been the capital of United Canada. Though Montreal was in Canada East, it had a slight English-speaking majority at this time. The later growth of the federal civil service there would have maintained a much larger English-speaking minority. This, combined with the predominance of the English-speaking majority in Parliament, might have turned Montreal into a genuinely bilingual-bicultural capital. Its much greater size would have made it a much more cosmopolitan centre for the mingling of the two cultures. Moreover, the

existence of the national capital within the territory of Quebec would have made it much more difficult for the "separatists" to think of Quebec's withdrawal from the federation.

It is difficult, however, to predict the extent to which the capital's location in Montreal would have cemented English-French relations. Would it instead have exacerbated them? Since complaints have been made that Montreal is even now dominated in its business world by the English-speaking minority, would not the presence of Parliament and the growth of the federal civil service there merely have increased the power and predominance of this minority? Also, one thinks of the close and delicate relations that would have been created between the Federal Government and the governments of Quebec and Montreal by the existence of the federal Parliament and other buildings within the boundaries of Montreal. Yet the prospects of turning Montreal Island into a federal territory would have been slim, and in any case the urban population would have overflowed the boundaries of the territory as it has done in the District of Columbia.

At any rate, because of the riot in Montreal aroused by the Rebellion Losses Bill, the burning of the Parliament buildings and the physical attack on Lord Elgin in the streets, the capital was moved from Montreal in 1849. From then until the choice of Ottawa in 1857, the capital oscillated dizzily every four years between Toronto and Quebec, and Montreal was never considered seriously again. Because of the intense rivalry between Upper and Lower Canada during this period over the

location of the capital, Ottawa was chosen as the least of evils. "Ottawa is in fact, neither in Upper nor Lower Canada," Sir Edmund Head noted in a confidential memorandum to the Queen in 1857. "Literally it is in the former; but a bridge alone divides it from the latter. Consequently its selection would fulfill the letter of any pledge given or supposed to be given, to Upper Canada at the time of the union."²¹

Although the rivalry between Upper and Lower Canada had been so intense that they were willing to put up with the inconveniences of shifting the capital back and forth, and although this rivalry continued even after the Queen's choice of Ottawa in 1857, no one before or at the time of Confederation seems to have thought of or proposed the creation of a capital which would be located in both Upper and Lower Canada. Yet this could have been done before Confederation (since Upper and Lower Canada were then united) by turning Ottawa and Hull into a single city, or after Confederation by carving out the area around Ottawa and Hull as a federal territory. Ottawa already had a French-speaking minority and the addition of Hull would have added strength to this minority. It would also partly have satisfied Lower Canada's desire to have the capital located in French-speaking territory. Downtown Hull is close to Parliament Hill; the existence of the Union bridge and the early construction of another bridge would have made quite possible the extension of federal buildings to that side of the river.

As it turned out, however, the relevance of Hull to

the national capital was virtually ignored for sixty years after Confederation. Since Hull had been cut off more definitely from Ottawa by Confederation and was from then on governed by a different legislature in a new province, this is perhaps not surprising. In any case, it was not officially included in the Federal Government's concept of the national capital until the creation of the Federal District Commission in 1927, when Hull was specifically named as part of the capital district to be improved. Even then, little was done to recognize Hull as part of the national capital. It is true that the Champlain bridge was completed, the federal driveway was extended to the Quebec side, and a beginning was made at acquiring the land north of Hull necessary to form Gatineau Park, which is now an important recreation area for Ottawa. But it was not until after the second world war that the first important federal building, the Printing bureau, was constructed in Hull.

Even the Master Plan of 1950 did not envision Hull as an integral part of the national capital. Although proposals were made for beautifying Hull, no large-scale migration of administrative buildings or national cultural or research centres, such as the National Library, Museum, Gallery, Performing Arts Centre, Research Council, or Central Experimental Farm, was projected. Among other things, such a migration would have reduced Hull's dependence for employment upon the E. B. Eddy Company and would probably have made possible the removal of its manufacturing plant, which mars the north shore directly across from Parliament Hill, flaunts a large neon sign

advertising its toilet tissues, and periodically blankets downtown Ottawa in sulphurous fumes.

In the process of implementing the Master Plan, too, the Federal Government tended to under-emphasize Hull. Although the municipality was obviously too poor to implement its share of the Plan, and lost considerable tax revenue through the expropriation of land for federal parkways, parks and other purposes, it received no special grants as Ottawa did before 1949, and the parliamentary Committee of 1944 had made no recommendation for such grants. True, Hull began to receive small grants in lieu of taxation under the general Act of 1949, but the Act does not include tax grants for federal park or parkway land. It was not until the Federal Government began its massive financial support to the implementation of the Plan in 1958 that Hull began to receive substantial aid in the form of joint sharing of the cost of projects such as the new inter-provincial bridge. And it was not until after 1962 that much was done about assisting Hull and its surrounding municipalities to draw up detailed plans for the future development of the Hull side of the river. Although the National Capital Plan had included a proposal for a Greenbelt surrounding Hull, this idea was abandoned, and the decision in 1958 to purchase land to preserve the Greenbelt did not include the Hull side. Today only one federal capital building - the Printing Bureau - stands as evidence that Hull is considered a functional part of the federal capital. Hull residents feel strongly about this neglect, and fear that the Government's increasing practice

of contracting out its printing will reduce the Printing Bureau to little more than a warehouse for government documents.

Why was Hull's claim that it should be regarded as part of the national capital ignored for so long and then so grudgingly admitted? From an employment point of view it had always been closely tied to the national capital. At the hearings of the parliamentary committee in 1956, the Mayor of Hull pointed out that by then between 5,000 and 6,000 residents of Hull were working in the federal civil service, and that half of the population depended upon the presence of the Federal Government for their employment. "If the Ottawa river had not stood there as an effective barrier," suggests Eggleston (p. 211), "had the bridge connections between the cities of Ottawa and Hull been more numerous and satisfactory, had the political relations between Quebec City and federal Ottawa been at times more cordial...I suspect that governmental Ottawa would have overflowed Parliament Hill to the north (as well as to the south-west and east)." His first reason may have been true of the first sixty years, but it has not been sufficient since. It is more likely that his second reason has been the predominant one, especially in this century. One can argue that if the Federal Government had been more forthright in its recognition of the Hull side of the river as part of the national capital by placing federal buildings there, and more generous in its financial support and in the representation of the Hull side on successive federal capital commissions,

co-operation from the Hull-side municipalities and from the Government of Quebec would have been much better.

From Quebec's point of view, the difficulty has always been that the national capital is in a sense an alien capital in alien territory. The culture and language of Ottawa are predominantly Anglo-Saxon and English-speaking, and it is governed under a different system of judicial and provincial law. French-speaking Canadians who came to live in Ottawa as Members of Parliament or as federal civil servants found that they were cut off from their cultural roots and were forced to speak, read and write English most of the time. They disliked living in Hull because it was only a run-down lumber town and a poor cultural home for educated French-Canadians. On the other hand, if they lived in Ottawa, they became part of an alien minority who lacked equal linguistic and educational rights under Ontario law. And in the city government there was always a strong majority of English-speaking Canadians. As a result, they tended to congregate in a separate French-speaking section of the city known as Lower Town, or to migrate to Eastview.

This no doubt explains Eastview's continuing existence as a separate municipality even though it is now an island within the boundaries of Ottawa. The annexations of 1950 tended to overwhelm the French-speaking minority in Ottawa, and Eastview became a kind of French-speaking bastion through its majority control of that municipality's Council and other local institutions. Eastview, for example, is one of the few

municipalities in Ontario which conducts its council business in both languages and which has bilingual by-laws, tax bills and traffic signs, and a bilingual public high school where several subjects are taught in French. French is the mother tongue of about half the teachers and over two-thirds of the students.

Ottawa has no bilingual public elementary or secondary schools. In 1965 the Public School Board refused the request of a group of French-speaking parents for a bilingual elementary school on the grounds that the children were too scattered and the classes would be too small. Nor are there any purely French-speaking separate schools in Ottawa or Eastview. Historically, under Ontario's educational system French-speaking children, like the children of immigrants, were expected to learn English as soon as possible. The curriculum required certain subjects, such as science and mathematics, to be taught in English, with progressively more English expected in the upper grades. In recent years a concession to this policy, in areas where the parents are predominantly French-speaking, has been to allow the first three grades to be taught almost entirely in French and several subjects to continue in French even into high school. About half of the separate schools in Ottawa and most in Eastview are bilingual schools of this kind.

Moreover, in the separate school system the standard of facilities and instruction is lower than that of the public schools, and separate school supporters must pay higher taxes. There are several reasons for this. First, the number of school

children in relation to the number of taxpayers is greater. Also, under Ontario law a corporation may split its school tax and pay the separate school tax in the proportion in which its shareholders are Roman Catholic, but most corporations elect to pay the lower public school tax. Similarly, a Roman Catholic may elect to pay the public school tax, and many do, particularly businessmen who wish to keep down competitive costs. On the other hand, non-Catholics (including non-Catholic fathers in a mixed marriage) must pay the public school tax even if they send their children to separate school. Although provincial grants have increased markedly in recent years, they do not make up for these costs and tax deficiencies. For 1966 the separate school tax rate is still about 12% higher than the public school rate.

Local tax and provincial support for separate schools does not go beyond grade 10. While a few Roman Catholic bilingual high schools exist, they are costly to the parents and provide a much lower standard of instruction than the public high schools. Similarly, the bilingual University of Ottawa was not provided with adequate financial support by the provincial government until it was reorganized as a non-sectarian university in 1965.

As a result of these educational difficulties and of the overwhelming predominance of the English language in business, in the federal and local public services, and in everyday living, French Canadians in Ottawa are threatened with the gradual loss of their language and culture. The 1961

statistics for the Ottawa census metropolitan area (which includes the Hull side) reveal that this has already taken place to some extent. I have assembled the relevant figures on the population's ethnic group, mother tongue, official language and religion in Tables I-IIA. These show that, of Ottawa's total population of 268,000 in 1961, nearly 70,000, or about one quarter, gave their ethnic origin as French. On the other hand, only 57,000, about one-fifth, gave their mother tongue as French, indicating some loss of the French language from one generation to the next. The whole metropolitan area on the south side, except for Eastview, shows a similar loss. Hull, on the other hand, actually shows a slight gain, indicating that some children of English-speaking parents have adopted French as their mother tongue. Out of Hull's population of 57,000 in 1961, only 5,500, or under 10%, did not give their mother tongue as French. Because of the existence of some English-speaking communities in the Hull metropolitan area, however, this area as a whole shows no gain for the French language. Exactly the same proportion, 85%, gave French as their ethnic group and mother tongue.

The figures on official language show a similar predominance of English and French, respectively, on the south and north sides of the river, and also indicate the extent to which the metropolitan area is bilingual. In the Ottawa area south of the river, whereas nearly 70% of the total population stated that of the two official languages they could speak English only, a mere 15,000, or under 5%, stated that they

TABLE I

ETHNIC GROUP, MOTHER TONGUE, OFFICIAL LANGUAGE AND RELIGION
OF POPULATION IN CENSUS METROPOLITAN AREA OF OTTAWA, 1961

(Population in thousands)

| Ethnic Group | Ottawa | Rest of Ottawa Area | East- view | Total Ottawa Metro. | Hull | Rest of Hull Area | Total Hull Metro. | Total Whole Area |
|-----------------------|--------|---------------------------|---------------|---------------------------|------|-------------------------|-------------------------|------------------------|
| | | | | | | | | |
| British Isles | 148.1 | 23.0 | 6.5 | 177.6 | 4.5 | 7.1 | 11.6 | 189.2 |
| French | 68.5 | 9.4 | 15.6 | 93.5 | 50.9 | 31.0 | 81.9 | 175.4 |
| Other | 51.6 | 7.8 | 2.5 | 61.9 | 1.5 | 1.8 | 3.3 | 65.2 |
| <hr/> | | | | | | | | |
| Mother Tongue | | | | | | | | |
| English | 188.1 | 29.3 | 8.4 | 225.8 | 4.6 | 8.8 | 13.4 | 239.3 |
| French | 56.9 | 8.2 | 15.0 | 80.1 | 51.4 | 30.5 | 81.9 | 162.0 |
| Other | 23.2 | 2.6 | 1.2 | 27.0 | .9 | .6 | 1.5 | 28.5 |
| <hr/> | | | | | | | | |
| Official Language | | | | | | | | |
| English only | 188.8 | 29.4 | 7.8 | 226.0 | 3.2 | 7.1 | 10.3 | 236.3 |
| French only | 9.0 | 2.3 | 3.6 | 14.9 | 25.5 | 16.4 | 41.9 | 56.8 |
| English and French | 67.0 | 8.3 | 12.9 | 88.2 | 27.9 | 16.4 | 44.3 | 132.5 |
| Neither | 3.4 | .2 | .3 | 3.9 | .3 | .0 | .3 | 4.2 |
| <hr/> | | | | | | | | |
| Religion | | | | | | | | |
| Roman Catholic | 127.4 | 16.7 | 19.4 | 163.5 | 54.8 | 35.3 | 90.1 | 253.6 |
| Other | 140.8 | 23.4 | 5.2 | 169.4 | 2.1 | 4.6 | 6.7 | 176.2 |
| <hr/> | | | | | | | | |
| TOTAL, 1961 | 268.2 | 40.1 | 24.6 | 332.9 | 56.9 | 39.9 | 96.8 | 429.8 |
| <hr/> | | | | | | | | |
| TOTAL, 1956 | 222.1 | 24.9 | 19.3 | 266.3 | 50.9 | 28.3 | 79.2 | 345.5 |

Source: Based on 1961 Census of Canada, Series 1.2: Population
(Canada, Dominion Bureau of Statistics), Tables 39, 70 and
46, in Bulletins 1.2-5, 1.2-9 and 1.2-6.

TABLE IA

PERCENTAGE DISTRIBUTION OF POPULATION
BY ETHNIC GROUP, MOTHER TONGUE, OFFICIAL LANGUAGE, AND RELIGION
IN CENSUS METROPOLITAN AREA OF OTTAWA, 1961*

| | Ottawa | Ottawa Metro. | Hull | Hull Metro. | Whole Area |
|--------------------------|--------|------------------|------|----------------|---------------|
| Ethnic Group | | | | | |
| British Isles | 55.2 | 53.3 | 7.9 | 11.9 | 44.0 |
| French | 25.5 | 28.0 | 89.4 | 84.6 | 40.8 |
| Other | 19.2 | 18.5 | 2.6 | 3.4 | 15.1 |
| Total | 100. | 100. | 100. | 100. | 100. |
| Mother Tongue | | | | | |
| English | 70.1 | 67.8 | 8.0 | 13.8 | 55.6 |
| French | 21.2 | 24.0 | 90.3 | 84.6 | 37.6 |
| Other | 8.6 | 8.1 | 1.5 | 1.5 | 6.6 |
| Total | 100. | 100. | 100. | 100. | 100. |
| Official Language | | | | | |
| English only | 70.3 | 67.8 | 5.6 | 10.6 | 54.9 |
| French only | 3.3 | 4.4 | 44.8 | 43.2 | 13.2 |
| English and French | 24.9 | 26.4 | 49.0 | 45.7 | 30.8 |
| Neither | 1.2 | 1.1 | .5 | .3 | .9 |
| Total | 100. | 100. | 100. | 100. | 100. |
| Religion | | | | | |
| Roman Catholic | 47.5 | 49.1 | 96.3 | 93.0 | 59.0 |
| Other | 52.4 | 50.8 | 3.6 | 6.9 | 40.9 |
| Total | 100. | 100. | 100. | 100. | 100. |

Source: Table I.

*Totals do not add to exactly 100.0, due to rounding of figures.

TABLE II

COMPARISON OF FRENCH AS ETHNIC GROUP, MOTHER TONGUE
AND OFFICIAL LANGUAGE, AND WITH ROMAN CATHOLIC RELIGION
IN OTTAWA, HULL, AND CENSUS METROPOLITAN AREA, 1961

(Population in thousands)

| | <u>Ottawa</u> | <u>Ottawa Metro.</u> | <u>Hull</u> | <u>Hull Metro.</u> | <u>Whole Area</u> |
|--|---------------|--------------------------|-------------|------------------------|-----------------------|
| Ethnic Group | 68.5 | 95.5 | 50.9 | 81.9 | 175.4 |
| Mother Tongue | 56.9 | 80.1 | 51.4 | 81.9 | 162.0 |
| Official Language (French only and Both) | 76.0 | 103.1 | 53.4 | 86.2 | 189.3 |
| Roman Catholic | 127.4 | 163.5 | 54.8 | 90.1 | 253.6 |
| | | | | | |
| Total Population | 268.2 | 332.9 | 56.9 | 96.8 | 429.8 |

Source: Table I.

TABLE IIA

PERCENTAGE COMPARISON
 OF FRENCH AS MOTHER TONGUE, ETHNIC GROUP AND OFFICIAL LANGUAGE,
 AND WITH ROMAN CATHOLIC RELIGION
 IN OTTAWA, HULL AND CENSUS METROPOLITAN AREA, 1961

| | <u>Ottawa</u> | <u>Ottawa Metro.</u> | <u>Hull</u> | <u>Hull Metro.</u> | <u>Whole Area</u> |
|--|---------------|--------------------------|-------------|------------------------|-----------------------|
| Ethnic Group | 25.5 | 28.0 | 89.4 | 84.6 | 40.8 |
| Mother Tongue | 21.2 | 24.0 | 90.3 | 84.6 | 37.6 |
| Official Language (French and Both) | 28.2 | 30.8 | 93.8 | 88.9 | 44.0 |
| Roman Catholic | 47.5 | 49.1 | 96.3 | 93.0 | 59.0 |

Source: Table II.

could speak French only. The Hull metropolitan area, and in particular the city of Hull, shows almost the reverse situation. Of Hull's total population of 57,000, a mere 3,200 spoke English only, while over 25,000, or nearly half, spoke French only. In the city of Ottawa, only about one quarter spoke both English and French, while in Hull and in its whole metropolitan area, there were more people who spoke both English and French than who spoke French only, indicating the much greater degree of bilingualism north of the river. In Hull almost exactly half of the population are bilingual. The reason, of course, is the predominant influence of English-speaking Ottawa. Much of the French-speaking population has been required to learn English in order to work in Ottawa, whereas in Ottawa the English have not had to learn French.

The comparative figures on religion show that, as might be expected, the number of people in the Hull metropolitan area who give their religion as Roman Catholic is about the same as those who give their ethnic group as French. The Ottawa metropolitan area, however, and Ottawa in particular, indicates a surprisingly larger number of people who are Roman Catholic than are of French origin; in Ottawa in 1961 about 128,000 were Catholic, nearly half the total population. This is because of the presence of a considerable number of Irish Catholics in the area.

In view of the disadvantageous situation of the French minority in Ottawa, it is not surprising that the federal Civil Service Commission has found it difficult to attract

French-speaking civil servants to Ottawa and to keep them there. Coming from a French-speaking culture in Quebec, they find living in Ottawa an unpleasant shock. As a result, many of them resign and return to their home province. After the reform government of Jean Lesage came into power in Quebec and began hiring well-qualified provincial civil servants, some of the best French-speaking federal civil servants left for Quebec. In recent years, the Federal Government has been making valiant efforts to meet one of the chief sources of French-Canadian dissatisfaction: the use of the French language in the civil service. A massive program has been launched to teach French to English-speaking civil servants, and the federal service is gradually becoming more bilingual. A new spirit is now developing among English-speaking civil servants. Many of them want their children to become fluently bilingual by taking their schooling in French, and would also like to see the position of the French-speaking minority in Ottawa improved.

The city government in Ottawa, however, has remained relatively untouched by these developments. True, the Council recently decided to introduce bilingual traffic signs in one French-speaking ward, and to print its future tax bills in both languages. But it decided that bilingual letterheads and by-laws would be too costly. And when the Royal Commission on Bilingualism and Biculturalism began looking into the use of the French language by the civic administration and the relative proportions of English and French-speaking civic servants, it received a singular lack of co-operation from the City, which at first objected to any inquiry being conducted and later refused

to allow a questionnaire on language practices to be distributed.

In April, 1966, the new Minister of Citizenship, Jean Marchand, in a speech to the Ottawa Board of Trade, criticized the general resistance to the use of French in Ottawa. Commenting on the cold reception this speech received from English-speaking Ottawans, Gerard Pelletier, newspaper columnist and new Member of Parliament, gave this graphic description of the French Canadian's reaction to Ottawa:

The capital city of a supposedly and officially bicultural country is about as bilingual as Kitchener, Ontario, or Edmonton, Alberta...It seems rather ludicrous to me that in order to represent a French-speaking riding of a French-speaking province in the Parliament of my country, I am forced to live in a unilingual city where I get unilingual summonses when I disobey unilingual traffic signs; where I would have to appear before an English-speaking court if I were to plead not guilty; where there is not a single public school in which my teen-age son and daughter could pursue their studies in their own language. All day long, one is reminded by a thousand details that the so-called "national capital" of Canada is an English-speaking city.²²

The attitude of French-Canadians to the capital city, then, is not hard to understand. They - and also many fair-minded English-speaking Canadians - are beginning to ask questions such as these: Is it right that the national capital, which is necessarily the home of many French-speaking M.P.'s and civil servants, should provide an atmosphere which to many of them is hostile? Is it right that they should be deprived of their own cultural environment, especially the use of their own language? Is it fair that they should not have equal educational services and linguistic rights? Isn't Ottawa as the national capital a special case - shouldn't it be a symbol of the two founding peoples and cultures, and shouldn't it

become a model of bilingualism and biculturalism for the rest of Canada?

The basic problem, however - as with the physical planning and development of the national capital - is that the Federal Government has no control over Ottawa. A number of people have recently come to believe, therefore, that the problem can only be solved by cutting the Ottawa area adrift from the overwhelming English-speaking majority and Anglo-Saxon culture and laws of Ontario, and combining it with the Hull area as a separate territory or province. This, then, explains the origin of the recent proposals to this effect made to the Royal Commission on Bilingualism and Biculturalism and elsewhere.

VI. THE CASE FOR A FEDERAL TERRITORY

HISTORY OF PROPOSALS FOR A FEDERAL DISTRICT

Because of the basic problem created by the location of the capital of a federal state within a city governed by the laws of a single province, proposals for a federally governed capital district have been made ever since Confederation. The proposals made in the early period were at various times given serious consideration until about 1939.

The first of these early proposals was made almost incidentally by John Hamilton Gray in his Confederation, published in 1872. His case for a Federal District was so well stated that it is worth quoting at some length (p. 108):

At the time of the Convention, one mistake occurred: no provision was made for creating a Federal District for the capital, and withdrawing it from the exclusive control of the local legislature of one of the Provinces. That which was designed to be the capital of the Confederation, might fairly rest its claim for support upon the people of the Dominion. Its order, well-being, sanitary arrangements, police regulations adornments and improvements are essential to the comfort and security, not only of the representatives who attend Parliament, but of all those who are compelled to resort to it as the capital of the country in the discharge of the various duties attendant upon the administration of public affairs. Its reputation should be national, not provincial. It belongs no more to Ontario than it does to New Brunswick, Nova Scotia, Quebec or any of the provinces constituting the Confederation. The expenses incident to its civic control must necessarily be far greater than would devolve upon it if merely an ordinary municipality. It is no answer to say that increased value in property is sufficient consideration for the increased burden put upon its inhabitants. That does not meet the question. They may not choose to accept the responsibility; and the Dominion Parliament, under confederation, has no power to legislate upon the matter.

The legislation for the capital in all civil matters is entirely under the control of one province, differing in its laws from the others. The employees and officials of the Dominion Government, residing at Ottawa, numbering almost two thousand men, in every respect competent as voters, and under other circumstances, capable of enjoying and exercising their franchise, are wisely interdicted, by the policy of the Government of the Dominion, from interfering in the local Provincial politics, or taking part in the elections for the Provincial Legislature. Yet they are subject to the taxation imposed upon them by that Legislature; and bluff old Harry the Eighth never unfrocked a bishop with more satisfaction than the Ontario Legislature, for local purposes, taxes a body of men whom they do not pay, and who are debarred from exercising any influence upon the selection of their body.

Gray then goes on to describe favourably the experience of the United States with the District of Columbia, and concludes (p. 110):

Thus we see that the character of a national capital, the security of those who attend it, the elimination of sectional and provincial interests in its government, the preservation of the national public property, the protection of the public interests, and the maintenance of the national reputation in its status, are too important to be left to local councils, however good they may be.

Americans have their capital, Canadians have no capital for their country. They borrow a municipality from Ontario, and whether they come from the Provinces of the Atlantic or the Pacific, whether from Quebec or Manitoba, their representatives in the Dominion Parliament have no power to legislate on any matter touching the property or civil rights of the so-called capital of the Dominion, however great the wrong to be redressed or the evil to be remedied. This should not be.

The city of Ottawa, with a certain area around it, should be created a Federal District; the laws for its future government (not interfering with private rights, or the city's present municipal privileges without adequate consideration), should be passed by the Dominion Parliament, and carried out by officers responsible to the Dominion Government, and through it to the people of the whole Dominion; or by a territorial arrangement, as in the District of Columbia, the legislatures of Ontario and Quebec ceding such portion of territory on both sides of the river as would make the District thoroughly unprovincial, and stipulating such terms in the cession as would preserve existing rights and interests.

By "a territorial arrangement", Gray probably means a territorial government such as that which had just been set up for the District of Columbia and which lasted for a short time. A territorial government for Canada's Federal District would not have been necessary at that time, of course, if the District were confined to a small area on the Ottawa side of the river and the city's government were to continue. In other words, Gray seemed to be proposing either that the city government should come under the direct control of Parliament, or that a larger district should be created including part of the Hull side of the river and governed by a territorial council. He does not make clear whether under the second arrangement the local governments would disappear.

By the turn of the century the idea of a federal territory was gaining ground. Eggleston mentions (p. 156) that in 1898 Laurier's Minister of Finance, W.S. Fielding, prepared a memorandum expressing the hope that while Laurier was in Washington he would make some inquiries about the system of government for the District of Columbia, and stating that Fielding "would not be disposed to object to moderate contributions from the Dominion treasury" to develop the capital under a proper system of government. An extract from Lady Aberdeen's diary, written a few days later, implies that by a "proper system" Fielding had in mind something like a federal district on the Washington model:

Mr. Fielding says "Get Ottawa under a Commission like Washington and I am with you." Probably he is right for the Ottawa authorities have not been very wonderful up to now.²³

By 1906 the idea had gained such favour in Ottawa that a plebiscite was actually held on the issue. Out of a total vote of about 8,000, the proposal was defeated by only about 800 votes.²⁴ In other words, 45% of those who voted approved of a federally governed district.

The first and only official proposal for a federal territory was that made by the Holt Commission in 1915. Although this six-man Commission included the Mayors of Ottawa and Hull, and its cost was shared by these municipalities, the Commissioners stated flatly as their first recommendation that "the future improvements in the area about the Capital at Ottawa and Hull should not be attempted without first establishing a Federal District and securing for the federal authority some control of local government."²⁵

"At the outset," says their report (p. 23), "the Commissioners were confronted by the problem of control of the capital, and they formed the opinion that an indispensable requisite to the success of their plans would be the creation of a Federal District with federal control of the area composed of Ottawa, Hull and the surrounding suburbs. It is not certain that it would be necessary or wise to adopt for Ottawa in all respects the same kind of federal control that is applied to Washington. But it is certain that federal control alone will ensure the carrying out of really adequate plans. It is also certain that the dignity and beauty of the capital of Canada are not more the business of the people of Ottawa than of the people of Canada as a whole. It could not be expected that a

municipality would be able to perform such a task on an adequate scale. It would require more money than they could afford, and a steady continuous policy which does not exist under municipal government. For the future of the national capital, control of the left bank of the Ottawa river and the City of Hull is vital. The two cities look at each other across a beautiful stretch of flowing water. Nature has made them part of one whole, and they can come under one control only by union in a federal district."

Other than this statement and a favourable description of the development of Washington under federal administration, the Commission provided no further justification or analysis of the implications of this proposal, and made no comment or proposal of any kind about the kind of governmental machinery that should be set up in the proposed federal territory. It is perhaps for this reason that the proposal was not given more serious consideration by the Federal Government. Although in 1928 Prime Minister Mackenzie King stated that a federal territory would eventually be necessary, nothing was done about the Holt proposal.

In 1938 Fred Cook, a former Mayor of Ottawa and member of the old Ottawa Improvement Commission, who had favoured the proposal for forty years, tried to revive it in a long series of articles in an Ottawa newspaper, but unfortunately proposed direct federal administration and the abolition of the local governments. In 1939 Carleton J. Ketchum, a journalist, published a short book, Federal District Capital,

which reviewed the still unrealized Todd and Holt plans for redeveloping the Ottawa area, gave some information about federal capital districts elsewhere, and again proposed a federal territory for Ottawa, but without stating the nature or implications of the proposal in any detail. No extensive discussion of the problem has appeared since. A few influential individuals have publicly stated their support for the proposal, notably F. E. Bronson, former chairman of the Federal District Commission, before the Joint Committee of 1944, and Senator Connolly and M. J. Coldwell before the Joint Committee of 1956 (see Eggleston, pp. 182, 213). But public discussion of the issue was not revived until the appointment of the Royal Commission on Bilingualism and Biculturalism in 1963.

In view of the "mistake" made in 1867, as explained by Gray, the Holt recommendation of 1915, and the Prime Minister's favourable view in 1928, why has the proposal not been taken more seriously since Confederation, and especially since 1915? The main reasons in the early period seem to have been the strong tradition of local self-government in Ottawa, the small size of the federal service, the lack of federal interest in and willingness to pay for building up an impressive national capital and the consequent early absence of the difficulties of divided jurisdiction inherent in the Confederation arrangement. Later, the fact that no full-scale study of the problem or of federal capitals elsewhere had been made, the constant reference to Washington as a model and the consequent identification of

federal jurisdiction with authoritarian control, the fear that Ontario and particularly Quebec would be unwilling to cede the necessary territory, the onset of the depression and the war, and Mackenzie King's apparent persuasion by Jacques Greber in 1937 that the planning problem could be solved without creating a federal territory - all seem to have been important factors.

In any case, the proposal has been revived by the Royal Commission, with a new justification. One of the complaints made by French Canadians has been that the French language and French-Canadian interests have not been given sufficient recognition outside Quebec, and particularly that the federal civil service under-represents French Canada and is not sufficiently bilingual. At the first public meeting of the Commission in November, 1963, one of the Associate Chairmen, Mr. Davidson Dunton, had suggested the following question for consideration by persons or groups who proposed to appear before the Commission: "Do you think that Canada should have a federal capital district in which the two main cultures and the two official languages would be equitably represented?"

As a result, out of about 375 briefs submitted to the Commission about 60 of them dealt with this question- some much more fully than others, of course. About 50 of these briefs were in favour of a federal district, a few were non-committal, and only four were directly opposed. The majority of those in favour were from New Brunswick or Quebec. The ones that were non-committal or directly opposed came mainly from western Canada or the Ottawa area. Only seven were from

the Ottawa area, with none from the Hull side. Of these, five favoured the proposal - a faculty group from Carleton University, the University of Ottawa (conditionally), and three personal briefs. The other two - from the Civil Service Association of Ottawa and the Union of Saint-Jean-Baptiste Societies of Eastview - were non-committal.

One cannot, of course, take the opinions expressed in these briefs as in any way representative of Canadian opinion as a whole, since it is likely that only those most in favour of the proposal took the trouble to discuss it. Most of the discussions were less than two pages in length and contained little analysis of the problem. For the most part they complained about the lack of bilingualism in the capital, often objected to the statement of the former Mayor of Ottawa, Charlotte Whitton, that the City could not officially use the French language or bilingual signs because this was not provided for by Ontario law, and concluded simply that federal control was desirable because the capital should become a model of bilingualism and biculturalism. The longest presentations were from the Conseil de la Vie française, Quebec (7 pages), the Association des Educateurs de langue française, Quebec (7 pages), the Chambre de Notaires, Quebec (4 pages), the New Democratic Party of Ontario (4 pages), and three individuals: John H. McDonald, Ottawa (9 pages), Frank Flaherty, Ottawa (6 pages), and A. R. Kear, Fredericton (16 pages).

Only the briefs from these three individuals presented specific proposals. Mr. McDonald's brief was also presented in

much the same form to the Murray Jones Commission, the Ontario Advisory Committee on Confederation, and the Committee on the Constitution of the Quebec Legislature. It proposed that the federal territory should have two Senators and should elect three or four members to the House of Commons, and that these might form a joint committee of Parliament, under the chairmanship of the Secretary of State or the President of the Privy Council, to consider the national capital budget. The Flaherty and Kear briefs proposed that the National Capital Region should become an independent eleventh province. Mr. Flaherty's proposal was also published in Week End Magazine on June 29, 1963. Both had picked up a semi-serious proposal I had made the year before in Macleans magazine, that the metropolitan areas of Toronto and Montreal should be provinces, and had applied it to the Capital Region. Both also used as precedents the existence in other federal countries of capital "city states", such as Vienna, Mexico City, and Berlin under the Weimar Republic.

The hearings before the Commission of course stimulated considerable public discussion of the idea of a bilingual federal territory.²⁶ In the fall of 1965 Dr. Seraphin Marion, a retired professor from the University of Ottawa, published an article in La Vie Franco-Ontarienne, the bulletin of the French-Canadian Educational Association of Ontario, supporting the idea. He pointed out the favourable effect a federal territory would have on the Roman Catholic and French-speaking minorities in the Ottawa area, despite its unfavourable effect of reducing

the French-Canadian minority in the rest of Ontario. Dr. Marion mistakenly claimed that there were 200,000 French-Ontarians in the Ottawa area. Table I shows that there were only 94,000 of French origin in 1961. However, he was nearly correct in his contention that the addition of the Hull side of the river to a federal territory would make it 42% French-speaking, 58% English-speaking and 60% Roman Catholic, so that the Roman Catholic majority would help to counterbalance the French-speaking minority. This article was summarized in Ottawa's Le Droit (Nov. 30, 1965) and also in English by the Canadian Press.²⁷

In the hearings before the Jones Commission on local government, of the forty-five submissions proposing changes, only one, that by Mr. John McDonald, recommended a federal district, and one, by the Greenbelt Property Owners' Association, proposed a province, suggesting that provincial status is required to effectively represent and safeguard local interests against federal authority. On the other hand, several of the other briefs indicated strong opposition to a federal district, usually on the ground that they thought it would be the antithesis of democratic local self-government.

In March, 1966, the Quebec wing of the federal Liberal party adopted a resolution in favour of a bilingual capital district, and Horace Racine, M.L.A. for Ottawa East, having decided that the Jones Commission's recommendation for a regional government on the Ottawa side of the river was unacceptable, gave his support to the proposal for an eleventh capital province.

The typical local press reaction was one of opposition, again based on the assumption that municipal governments would be abolished.²⁸

SUMMARY AND ANALYSIS OF THE ARGUMENTS

Much of the case in favour of a federal territory has, of course, been presented in the earlier chapters describing the difficulties of divided jurisdiction, and in the preceding history of the proposal. It remains only to summarize the arguments here and to analyze them briefly. They may be reduced to four main arguments, all of which are closely related: (1) on grounds of principle the capital of a federal country should belong to the people of the whole nation and should not be located within the boundaries of any one province or city of that province; (2) precedents elsewhere demonstrate the superiority of a federal capital territory; (3) the physical redevelopment of the capital would be much easier under a federal territory; and (4) the bilingual-bicultural nature of the national capital would be greatly improved.

1. The Principle of a Federal Capital

John Hamilton Gray's eloquent exposition of this principle has already been quoted in full. His arguments as to why federal Members of Parliament and civil servants resident in the capital city should not come under the laws of any one province are very convincing. To these may be added the argument that the far-away provincial capitals of Toronto and Quebec tend to neglect the interests of the Capital Region, especially since such a large proportion of its residents are non-political civil servants. Two opposing points, however,

should be noted. Nine-tenths of federal civil servants are located outside Ottawa, and are of course subject to the laws of the provinces in which they live. Also, Ottawa and Hull have histories which pre-date Confederation, and a large proportion of their residents are not federal civil servants. In this respect, the Capital Region is a sort of "Siamese-twins" area - being at one and the same time the location of the national capital and an old population centre with its own traditions of self-government and its own industrial, commercial and agricultural interests. Gray's arguments would have been truer of a newly created capital such as Washington or Canberra where from the beginning the overwhelming proportion of its residents were federal civil servants or their dependents. Nevertheless, since Ottawa is not a great industrial or commercial centre, well over one third of its residents are federal employees or their dependents. Throughout this century the Federal Government has become increasingly important as a source of employment in the area and is of course by now by far the largest employer.²⁹ A comparison of labour force distribution by major industry group in 1961 shows 33.2% in "public administration and defence" in the Ottawa metro. area as compared with, for example, 5.5% in the Toronto area. This figure does not include the employees of a number of large federal Crown corporations in Ottawa, which would considerably increase the percentage. Nor does it include embassy staff, headquarters of national organizations, political lobbies or parliamentary newsmen. Probably three-quarters of the labour

force in the area directly or indirectly are dependent for their employment upon the fact that Ottawa is the national capital.

2. Precedents Elsewhere

Throughout the history of the argument over a federal district, the existence of precedents elsewhere has, of course, always been referred to. Since the United States was the original federal system, was regarded as a model for the rest of the world, and was close at hand, the example of the District of Columbia was constantly used. Gray devoted a considerable proportion of his argument to praising the American example, and every proposal since then seems to have done likewise, adding to it the example of Canberra after its successful creation in a federal territory by the Government of Australia after 1909. Because of the constant reference to these two examples, they came to be regarded as the standard and only possible models. Unfortunately, both of them provided for direct administration by the Federal Government and allowed virtually no self-government or voting rights for the local citizens. As a result, these facts became standard arguments against a federal territory for Canada. The facts that other arrangements were possible and that other federal capital territories existed with different arrangements were ignored. For example, in an article entitled "We Don't Want a Federal District for Ottawa" (Canadian Business, Feb., 1958), J. Harvey Perry, a former senior civil servant, constantly identified the proposal with the existing arrangements in Washington and

Canberra and used them as a main reason for opposing the idea.

Opponents often fail to note that Washington had a locally elected government until 1871, and that one of the main reasons for its failure and abolition was the lack of sufficient financial support from the Federal Government. Nor do they note that in recent years there has been a rising criticism of the lack of self-government and voting rights in Washington and Canberra. Self-government has not been granted to Washington because of the opposition of Southern representatives in Congress to giving political power to the majority negro population. The grant of voting rights in federal elections to the residents of the District of Columbia requires a cumbersome constitutional amendment procedure. Nevertheless, as a result of the growing criticism the Constitution was amended recently to allow them to vote in presidential elections, and proposals are now being made for an amendment to give them representatives in Congress. In the Australian Capital Territory until now the one member elected to the House of Representatives has had only the right to vote on matters affecting the Territory. But in future he will have full voting rights on all matters. The Australian Government is also considering proposals for replacing the present partly elected Advisory Council for the Territory by a fully elected governing council.

Those who favour a federal territory, on the other hand, often fail to note that the main provisions for it must be placed in the Constitution and so cannot be adapted easily to social and economic change. The difficulty of obtaining

voting rights in the District of Columbia is a case in point. Also, urban Washington long ago overflowed the boundaries of the constitutionally-created District into the two surrounding states, and this has created frightful problems of governing and controlling the development of the whole metropolitan area. The lesson to be learned is that, if a federally governed district is to be created, the provinces must cede enough territory to accommodate any conceivable future expansion of the built-up area. Projections indicate that the present National Capital Region will comfortably contain the urban population until the year 2,000. But will it do so in the year 2,050, or 2,100?

No thorough study of other federal capital districts has been made in Canada, the relevant information is not easily available, and not much is known about them. Many of them - such as Mexico City, Buenos Aires in Argentina, Caracas in Venezuela, Rio de Janeiro and later Brasilia in Brazil - are in South American countries which are not regarded as models of democratic government. But others do or did exist in countries having a stronger democratic tradition, such as Vienna in Austria, New Delhi in India, and Berlin under the Weimar Republic. In any case, all of them seem to provide for some form of local self-government, with varying degrees of local independence and voting rights, so that a study of their experience in this respect, and of their forms of territorial government, would be valuable.

3. The Physical Development of the Capital

From the beginning, one of the main arguments has been that the physical and aesthetic development of the Ottawa area into a capital worthy of a great country would be much more easily and fully achieved under a federal territory. The lack of a planned development of the area in the early years seemed to prove this contention, and the Federal Government was faced with the much more difficult and costly problem of re-development, especially in the urban core. Earlier chapters have described fully the difficulties of divided jurisdiction that were involved. Chapters III and IV described how these problems had been partly solved since the war, but pointed to new difficulties that were developing for the future.

The argument has always been that if the Federal Government had control over the physical development and government of the area, the plans for the capital could be much more ambitious and impressive in concept, and much more successful in execution. Experience elsewhere has demonstrated that a metropolitan plan cannot be successfully and completely implemented unless a corresponding metropolitan government exists or is created with authority to implement the plan.³⁰ On the other hand, the history of planning in the national capital shows that generous federal financial support is able to overcome many of the present difficulties of divided jurisdiction. From a democratic point of view the participation of the local residents in both the formulation and execution of the National Capital Plan is desirable. Yet even under a

federal territory this problem would still remain, and there would be inevitable conflicts of interest between the Federal Government and the local residents.

4. The Desire for a Bilingual-Bicultural Capital

The gist of this argument has already been given. There is no doubt that federal control of a capital territory, with proper guarantees for equal minority rights - linguistic, religious, educational and cultural - would make it possible for the national capital to become a symbol and model of bilingualism and biculturalism for the rest of the country. Ottawa is already the most bilingual of the large cities outside Quebec. Eastview is the only city outside Quebec that has a French-speaking majority. Except for one small city in Quebec (Sillery, population 14,000 in 1961), Eastview and Hull are the only cities in Canada whose population is half bilingual (see Table III). The addition of these cities to the capital would therefore greatly strengthen its bilingual-bicultural character.

The formation of a federal territory corresponding with the boundaries of the National Capital Region would greatly improve the whole ethnic, linguistic and religious balance of the capital's population. In 1961, 91% of the population of the Region resided within the Ottawa-Hull urban area. By 1986 it is predicted that the urban population will be 96.6% of the total.³¹ The 1961 census figures for the urban metropolitan area may therefore safely be taken as representative of the whole Region. The ethnic and linguistic

proportions have not changed very much by 1966, nor are they likely to be altered significantly in the near future. The 1961 figures reveal that turning the whole Region into the federal capital would increase French Canadians as an ethnic group from one quarter to about 40% of the total population (see Tables IA, IIA). It would also increase those whose mother tongue is French from under one quarter to nearly 40%, and the number of people who could speak both English and French would increase from one quarter to over 30%. The ethnic distribution of the population would then be: Anglo-Saxon, 44%; French 41%; and other, 15%. Those whose mother tongue is English would be 56%; French 38%; and other, 6%. Although English would predominate as a language, Anglo-Saxons and French would be about equally balanced as ethnic groups, and Roman Catholics would be in a comfortable majority (59%).

Since elsewhere in Canada the population tends to be either overwhelmingly English-speaking and Protestant or overwhelmingly French-speaking and Roman Catholic, the Capital Region would have the best-balanced ethnic, linguistic and religious population of any large metropolitan area or province in Canada (Tables IV and IVA). Its balance would, for example, be far superior to that of the provincial capitals of Ontario and Quebec. The only serious competitors would be New Brunswick and metropolitan Montreal. New Brunswick's ethnic and linguistic proportions are much like those of the Capital Region. Of the total population, 39% are of French origin and 35% have French as their mother tongue. However, only 6% are of other than

TABLE III

BILINGUAL AND FRENCH-SPEAKING POPULATION
OF SELECTED CITIES, 1961

(Population in thousands)

| | <u>Total</u> | <u>Bilin-gual</u> | <u>French Tongue</u> | <u>Percent Bilingual</u> | <u>Percent French</u> |
|--------------|--------------|-------------------|----------------------|--------------------------|-----------------------|
| Ottawa | 268.2 | 67.0 | 56.9 | 25 | 21 |
| Eastview | 24.6 | 12.9 | 15.0 | 52 | 61 |
| Hull | 56.9 | 27.9 | 51.4 | 49 | 90 |
| Cornwall | 43.6 | 19.0 | 18.5 | 44 | 42 |
| Moncton | 43.8 | 14.7 | 14.1 | 34 | 32 |
| Lachine | 38.6 | 15.3 | 20.7 | 40 | 54 |
| Montreal | 1,191.1 | 462.8 | 806.1 | 39 | 68 |
| Outremont | 30.8 | 14.2 | 15.3 | 46 | 50 |
| Quebec | 172.0 | 46.0 | 164.2 | 27 | 95 |
| St. Boniface | 37.6 | 13.5 | 13.4 | 36 | 36 |
| St. Laurent | 49.5 | 19.0 | 20.4 | 38 | 41 |
| Sherbrooke | 66.6 | 23.0 | 58.7 | 35 | 88 |
| Sillery | 14.1 | 7.1 | 11.7 | 50 | 83 |
| Sudbury | 80.1 | 23.2 | 23.3 | 29 | 29 |
| Timmins | 29.3 | 11.4 | 12.0 | 39 | 41 |
| Verdun | 78.3 | 30.9 | 44.7 | 39 | 57 |
| Westmount | 25.0 | 10.2 | 5.1 | 41 | 20 |

Source: Based on 1961 Census of Canada, Series 1.2: Population,
Table 67.

Anglo-Saxon or French origin (compared with the Region's 15%), and fewer than one-fifth are bilingual (compared with the Region's nearly one-third). Just over half of them are Roman Catholic.

On most counts a federal Region would compare favourably with the Montreal area. Whereas about 40% of the Region's population would be of French origin, and 38% of French tongue, in metropolitan Montreal only 18% are of Anglo-Saxon origin, and only 23% are of English mother tongue. Whereas Roman Catholics are an overwhelming majority in metropolitan Montreal (78%), they would constitute only 60% of the population in the Region. Montreal has a slightly higher proportion (18%) whose ethnic origin is other than Anglo-Saxon or French. Also, its population is somewhat more bilingual than the region's population would be at the beginning (37%, compared with 30%).

In this respect it is interesting to compare what proportion of the English - and French-speaking populations can speak the other language. In the Capital Region only about 10% of those whose ethnic origin is from the British Isles and who speak English can also speak French, while in metropolitan Montreal nearly 30% of them can speak French. On the other hand, in the Region almost exactly two-thirds of those who are of French origin and who speak French can also speak English, whereas in the Montreal area only 42% of these can speak English.³² It is not surprising that in Montreal, where French is the majority language, a higher proportion of English-speaking

TABLE IV

COMPARISON OF ETHNIC AND RELIGIOUS
CHARACTERISTICS OF POPULATION IN SELECTED
METROPOLITAN AREAS AND PROVINCES, 1961
(Population in thousands)

| | <u>Ontario</u> | <u>Toronto Metro</u> | <u>Quebec Province</u> | <u>Quebec Metro</u> | <u>Montreal Metro</u> | <u>Ottawa Metro</u> | <u>New Brunswick</u> |
|--------------------------|----------------|----------------------|------------------------|---------------------|-----------------------|---------------------|----------------------|
| Ethnic Group | | | | | | | |
| British Isles | 3,711.5 | 1,107.2 | 567.1 | 14.2 | 377.6 | 189.2 | 329.9 |
| French | 647.9 | 61.4 | 4,241.4 | 336.8 | 1,353.5 | 175.4 | 232.1 |
| Other | 1,876.7 | 655.9 | 450.7 | 6.6 | 378.4 | 65.2 | 35.9 |
| Mother Tongue | | | | | | | |
| English | 4,834.6 | 1,378.3 | 697.4 | 13.4 | 494.7 | 239.3 | 378.6 |
| French | 425.3 | 26.0 | 4,269.7 | 341.2 | 1,366.3 | 162.0 | 210.5 |
| Other | 976.2 | 400.2 | 292.1 | 3.0 | 248.5 | 28.5 | 8.8 |
| Official Language | | | | | | | |
| English Only | 5,548.8 | 1,690.6 | 608.6 | 5.1 | 462.3 | 236.3 | 370.9 |
| French Only | 95.2 | 3.1 | 3,254.9 | 265.2 | 826.3 | 56.8 | 112.1 |
| Both | 493.3 | 78.3 | 1,338.9 | 86.7 | 776.6 | 132.5 | 113.4 |
| Neither | 98.8 | 52.5 | 56.8 | .6 | 44.3 | 4.2 | 1.5 |
| Religion | | | | | | | |
| Roman Catholic | 1,873.1 | 478.6 | 4,635.6 | 350.5 | 1,641.7 | 253.6 | 310.6 |
| Other | 4,363.0 | 1,345.9 | 623.6 | 7.1 | 467.8 | 176.2 | 287.3 |
| Total | 6,236.1 | 1,824.5 | 5,259.2 | 357.6 | 2,109.5 | 429.8 | 597.9 |

Source: Based on Table I and 1961 Census of Canada, Series 1.2: Population,
Tables 35, 39, 42, 46, 64, 70.

TABLE IVA

PERCENTAGE COMPARISON OF ETHNIC AND RELIGIOUS
CHARACTERISTICS OF POPULATION IN SELECTED
METROPOLITAN AREAS AND PROVINCES, 1961*

| Ethnic Group | Ontario | Toronto | Quebec | Montreal | Ottawa | New |
|--------------------------|---------|---------|--------|----------|--------|-----------|
| | Metro | Metro | Metro | Metro | Metro | Brunswick |
| British Isles | 59.5 | 60.6 | 10.7 | 3.9 | 17.8 | 44.0 |
| French | 10.3 | 3.3 | 80.6 | 94.1 | 64.1 | 40.8 |
| Other | 30.0 | 35.9 | 8.5 | 1.8 | 17.9 | 15.1 |
| Total | 100. | 100. | 100. | 100. | 100. | 100. |
| Mother Tongue | | | | | | |
| English | 77.5 | 76.6 | 13.2 | 3.7 | 23.4 | 55.6 |
| French | 6.8 | 1.4 | 81.1 | 95.4 | 64.7 | 37.6 |
| Other | 15.6 | 21.9 | 5.5 | .8 | 11.7 | 6.6 |
| Total | 100. | 100. | 100. | 100. | 100. | 100. |

Source: Table III

*Totals do not add exactly to 100.0, due to rounding of figures.

Continued

TABLE IV A (continued)

PERCENTAGE COMPARISON OF ETHNIC AND RELIGIOUS
CHARACTERISTICS OF POPULATION IN SELECTED
METROPOLITAN AREAS AND PROVINCES, 1961*

| | <u>Ontario</u> | <u>Toronto Metro</u> | <u>Quebec Province</u> | <u>Quebec Metro</u> | <u>Montreal Metro</u> | <u>Ottawa Metro</u> | <u>New Brunswick</u> |
|--------------------------|----------------|--------------------------|----------------------------|-------------------------|---------------------------|-------------------------|--------------------------|
| Official Language | | | | | | | |
| English only | 88.9 | 92.6 | 11.5 | 1.4 | 21.9 | 54.9 | 62.0 |
| French only | 1.5 | .1 | 61.8 | 74.1 | 39.1 | 13.2 | 18.7 |
| Both | 7.9 | 4.2 | 25.4 | 24.2 | 36.8 | 30.8 | 18.9 |
| Neither | 1.5 | 2.8 | 1.0 | .1 | 2.1 | .9 | .2 |
| Total | 100. | 100. | 100. | 100. | 100. | 100. | 100. |
| Religion | | | | | | | |
| Roman Catholic | 30.0 | 26.2 | 88.1 | 98.0 | 77.8 | 59.0 | 51.9 |
| Other | 69.9 | 73.7 | 11.8 | 1.9 | 22.1 | 40.9 | 48.0 |
| Total | 100. | 100. | 100. | 100. | 100. | 100. | 100. |

Source: Table III

*Totals do not add exactly to 100.0, due to rounding of figures.

people learn French than in Ottawa; or that in Ottawa, where English is the majority language, a higher proportion of French-speaking people learn English. But it is interesting that the proportion of the minority who have learned the majority language is much higher in Ottawa than in Montreal, while the proportion of the majority who have learned the minority language is very much higher in Montreal than in Ottawa.

Certainly, the number of English-speaking people in the proposed federal territory who would be able to speak French would at first be disappointingly small. However, since Ottawa's civil service is now becoming more bilingual, and since one of the main objectives of creating a federal territory would be to promote bilingualism, one could expect the proportion of people who can speak both English and French fluently, and in particular the number of English-speaking people who can speak French, to rise rapidly.

These comparisons show that though the ethnic and linguistic balance in the federal territory would be good, it would be far from perfect. For this reason the political difficulties involved in creating and governing the territory would not easily be solved. Although the addition of the Hull side of the river would certainly add strength to the French minority on the Ottawa side, French Canadians would still be slightly in the minority. Yet one could expect their position to improve further if the proportion of French-speaking civil servants is increased, as may be expected. Moreover, linguistic and educational guarantees in the constitution of the new territory could

further protect their position, even though the Parliament of Canada, which would be the ultimate governing authority, has an English-speaking majority. As Dr. Marion has pointed out, the position of the French Ontarians in the Ottawa area would be greatly improved, compared with their present position under the laws of Ontario. Even if they did not consider it an ideal arrangement, from their point of view it would certainly be by far "the best of evils."

The Hull side of the river, however, would have far less to gain. At first glance their position would appear to be considerably worsened. The reaction of Gatineau's M.L.A. to Mr. Flaherty's proposal for a capital province was to object to it for this reason.³³ Yet with suitable guarantees for minority rights, and especially if a considerable measure of local self-government were granted to the Hull side, this may be a false fear. By becoming constitutionally part of the national capital, Hull could expect to participate much more fully in, and to benefit much more financially from, the beautification of the capital and the redevelopment of its urban core. For example, many more federal buildings would be located on the Hull side of the river. Although the effect of this might be to increase the English-speaking population, one could also expect many more French-speaking civil servants to live on the Hull side. These would include educated senior officials, some of whom would become leaders in the local community. The position of French Canadians on the Hull side of the river may therefore be improved by becoming part of a federal territory.

The creation of a federal territory would itself be very likely to stimulate a rapid growth of bilingualism, especially if the educational system in the territory were reorganized so as to provide genuinely bilingual public and separate schools where instruction is given in both languages. On the Ottawa side of the river the difficulty at present is that in most areas there are not enough non-Catholic French-speaking families in any one area to justify the creation of a bilingual public school. This is true even of separate schools in a predominantly English-speaking area. The Separate School Board of Nepean, for example, recently refused the request of an organized group of French-speaking families for such a school because only the first grade would have a large enough class. As a result, some of these families are moving from the township because they fear that their children will lose the ability to speak French. The answer to the problem lies in direct encouragement and financial subsidies from a higher level of government to support small, uneconomic schools of this kind, or to transport the pupils to larger schools. At the same time, there are now a number of English-speaking parents who would like their children to become bilingual by attending bilingual public or separate schools. If the schools were easily available, and with proper encouragement, many more English-speaking parents would desire their children to do so. This would increase the size of the schools and make them a much more economically feasible proposition.

There is also a need for bilingual schools on the Hull

side of the river. But there the need is not as great because the English-speaking minority are not in as much danger of losing their mother tongue and the French Canadians tend to become bilingual in any case. Nevertheless, somewhat the same need exists for establishing bilingual Catholic schools where part of the instruction is given in English, and bilingual Protestant schools where part of the instruction is given in French.

THE PROPOSAL FOR A CAPITAL PROVINCE

The proposal made by Mr. Flaherty and Mr. Kear that the National Capital Region should be carved out as Canada's "eleventh province" is much like that for a federal territory with an elected territorial government. The use of the term "province" in the proposal has many attractions. It avoids the confusion that has arisen over the term "Federal District" because of its former use to describe the area of jurisdiction of the former Federal District Commission, and it avoids the stigma that has become attached to this term by constant association with the Federal District of Columbia and the absence there of self-government and voting rights. The term "province" in the proposal is arresting and dramatic, and--as an added attraction for the local residents--implies a high degree of local autonomy and self-government. For these reasons, there is much to be said in favour of using this term in public discussion to describe the proposal for a separate capital territory.

At the same time, it should be realized that the national capital territory could not be given the same constitutional independence and power as a province. For then the Federal Government would have no direct control over its own seat of government. To make the National Capital Region into a province with virtually the same constitutional independence and autonomy as the existing provinces would place the Federal Government in much the same powerless position as it is now in relation to the national capital: the capital would again be under the control and laws of a single province. There would no doubt be advantages to this new arrangement. The metropolitan area would come under the unified control of a single provincial legislature, which would, unlike the governments of Ontario and Quebec, single-mindedly concentrate its attention upon solving the problems of this area alone. But the basic position of the Federal Government in relation to the new province would be the same as it is now in relation to the two provinces of Ontario and Quebec regarding control of the National Capital Region. Constitutionally, its control over the area would be left unchanged, and the same difficulties of divided jurisdiction would remain.

Moreover, the proposal assumes that political parties would continue to operate in the new province. This would raise the problem of the exclusion of federal civil servants from participation in "provincial" political activities. They and their families would almost constitute a majority of the population in the new province. It would also raise the even more

difficult problem of federal--"capital province" political relations, as demonstrated by the experience of Austria. In Austria--where the capital city, Vienna, has the status of a state in the federation--between the wars a Christian Democratic federal government was constantly faced with an unco-operative Socialist government in control of the national capital. Once the Government of the new province came into power there would be no guarantee that the objectives of those who had created the province would be achieved. For example, the English-speaking majority in the area might decide not to promote the objective of bilingualism and biculturalism.

The examples of other "city-states" used by Mr. Flaherty and Mr. Kear are not strictly relevant because some are not federal capitals and because the states in their federations are not as autonomous as Canada's provinces. Moreover, the capital city-states cited, Vienna and Berlin, are huge industrial and commercial centres with a wide range of interests and a long tradition of independence. There the federal government's interest in the urban area as a seat of government would not predominate as it does in Ottawa, and the case for full status as a state would be stronger.

It would therefore seem that in any new arrangement for the government of the National Capital Region, the Federal Parliament must have ultimate authority, subject, of course, to any superior constitutional guarantees that would be placed in the British North America Act by agreement between the Federal Government and the provinces. These guarantees could be placed

in the Constitution just as easily for a federal territory as for a province.

However, the concept of a "capital province" is useful as an analogy. It highlights what fundamental constitutional, legal and political changes would be involved in the creation of a federal territory. All of the powers now possessed by the two provincial governments in the National Capital Region would have to be taken over by the Federal Government and a new territorial government. And the services now provided in the Region by the two provinces would similarly have to be taken over except that at first they might continue to be provided by agreement with these provinces. Similarly, what are now provincial taxes would have to be decided upon, levied and collected by either the Federal or territorial Government. Also, the present federal-provincial tax sharing agreements and the system and level of federal grants to the provinces would have to be used as a guide for the financial arrangements between the Federal Government and the new territorial government.

VII. THE ARGUMENTS AGAINST A FEDERAL TERRITORY

The case against a federal territory may be summed up under these four broad arguments: it would be both constitutionally and politically difficult to create such a territory, especially because of local opposition and Quebec's reluctance to cede territory to the Federal Government; the problem of governing it as a unit would be insoluble because of the double-splitting of interest that would be involved--federal versus local, and French law, language and culture on one side of the river versus Anglo-Saxon on the other; other alternatives are available; in any case, a federal territory is not needed. Let us consider each of these in turn.

DIFFICULTY OF CREATING IT

From a constitutional point of view the creation of a federal territory does not appear to present any great difficulty. As John H. McDonald has pointed out in his brief, (p.18), the British North America Act was amended in 1871 to provide that the Parliament of Canada may alter the boundaries of a province with the consent of that province. The relevant provisions are as follows:

3. The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase

or diminution or alteration of territory in relation to any Province affected thereby.

4. The Parliament of Canada may from time to time make provision for the administration, peace, order and good government of any territory not for the time being included in any Province.

It would therefore be possible for the Federal Government to arrange for the provinces to cede the necessary lands without a constitutional amendment.

Politically, however, the creation of a federal territory would no doubt require such an amendment, because it would affect the rights and interests of a large number of the residents of Ontario and Quebec. The power of the Federal Government to amend the Constitution is at present governed by the provisions of the 1949 amendment to the B.N.A. Act, which provides that the Federal Parliament has power over "the amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a Province, or to any class of persons with respect to schools, or as regards the use of the English or the French language..." Since the ceding of territory by Quebec would affect the language and school rights of Quebec and of a considerable number of its present citizens, it seems clear that the instrument creating a federal territory would have to be in the form of a Statute passed by the United Kingdom amending the B.N.A. Act. Constitutionally it would require the consent of only

Ontario and Quebec, but politically it would be wise to secure the consent of the remaining provinces.

The desirable linguistic, cultural, educational and religious guarantees for the residents of the territory could be worked out by agreement with Ontario and Quebec and placed in the Statute creating the territory, so that they could not be abrogated or changed by the Federal Government without the agreement of these provinces and an amendment to the Imperial Statute. If it were thought that the objectives of promoting bilingualism and biculturalism should be emphasized, these objectives could be included in the Statute. Similarly, certain essential features of the form of government for the new territory might also be placed in the Imperial Statute so that they could not be changed without the consent of the other provinces, or at least Ontario or Quebec. For example, to ensure a desirable degree of self-government for the territory, it might be specified that the local residents shall elect representatives to Parliament, to the territorial council or legislature, and to local governments in the Region. Even the main outlines of the structure of government for the territory might be specified in the Statute but with the instruction that this structure may be changed in future by a simple Act of the Federal Parliament. This would be somewhat like the provision in the British North America Act of 1867 for the constitutions of Ontario and Quebec until such time as their legislatures might decide to amend their constitutions. It would have the advantage of allowing provincial participation and agreement in drawing up the

original constitution for the territorial government but at the same time would preserve flexibility by allowing the Federal Parliament to make minor changes and adjustments in future by itself.

More impressive than the constitutional difficulties of creating a federal territory are the political ones. A standard opposition argument has been that Quebec would not agree to the loss of territory and population involved. However, the strength of this argument may be over-estimated. Ontario would be giving up over 400,000 of its population, while Quebec would lose only about 125,000. If the federal territory is to become a model for the protection of minority rights and for the development of bilingualism and biculturalism, Quebec may easily be persuaded that it has more to gain than to lose.³⁴

A second standard argument has been that the local municipalities and residents would be unalterably opposed to the creation of a federal territory. This argument is an impressive one, because the fact is that local civic politicians have frequently, and in recent years almost consistently, voiced their opposition to the proposal. Examples of such statements are contained in their evidence before the parliamentary Joint Committees of 1944 and 1956. The assumption is always made, however--and this is always given as the main reason for their opposition--that local self-government would disappear and the local residents would lose their political rights. This argument would be answered by a proposal which included the preservation of local self-government and the election of representatives to

a territorial government and to Parliament. It is difficult to know what the attitude of local politicians and residents would be if they were faced with this kind of proposal, but I suspect that the opposition would decline greatly and local opinion might even change in its favour.

This raises the interesting question of the extent to which local consent should be sought for such a proposal. It seems to me that on theoretical grounds the consent of a majority--say in the form of a plebiscite--should not be required. Indeed, one can argue that on such an issue the interests of the people of Canada in the national capital and in the objectives sought to be achieved by the creation of a federal territory should override if necessary the opposition of a small minority of the country's population residing in the territory. But this would depend, of course, upon the strength of feeling of the local opposition. As long as a significant proportion of the local population seemed to be in favour of the idea, and no significant group were strongly opposed, the Federal Government, with the agreement of the two provinces, could justifiably proceed. In any case, the Governments of Ontario and Quebec would not be likely to agree to the proposal in the face of strong opposition from a significant proportion of their local constituents.

The strongest opposition would very likely come from the Hull side. Hull feels so strongly about its past neglect by the Federal Government that the latter would have to make a clear commitment to finance a large share of the redevelopment of downtown Hull and to place new federal buildings there. This

would make sense in any case. Many people feel that federal departments are now becoming physically too decentralized. Downtown Hull is in the heart of the capital. Placing key federal departments there would improve inter-departmental and policy co-ordination. It would also promote bilingualism. The resulting increase in population on the Hull side, however, would require important changes in the National Capital Plan and in the recent Ottawa-Hull transportation plan.

THE PROBLEM OF GOVERNING IT

The problem of governing a federal territory involves reconciling a two-way split: the split in legal systems, laws, political traditions and interests between the two sides of the river, and the split between the interest of the Federal Government in its own seat of government and the desire of the local residents to govern their own affairs. Opponents of a federal territory argue that the difference between the two sides of the river are so great that they would be extremely difficult, if not impossible, to reconcile, and that the creation of a federal territory would wipe out local self-government.

Regarding the first of these arguments there is no doubt that the difference in legal systems and provincial laws now in force on the two sides of the river would create problems. It should be pointed out, however, that the courts and laws need not necessarily be integrated or unified. The constitutional instrument creating the territory could simply provide that the

legal systems and laws of Ontario and Quebec shall continue to be in effect unless and until they are changed by the Parliament of Canada or the new territorial government. In the creation of new governmental authorities this type of provision is quite common. One would expect any integration of the two legal systems to be done only gradually and over a long period of time, and only if and when it seemed desirable.

As John H. McDonald has suggested in his brief, the new territory would simply take over the two court systems as they now exist on each side of the river, except that it would, of course, provide for the use of the French language in the courts on the Ontario side. The Exchequer Court of Canada could be made the Court of Appeal for the territory. Local police could continue as before, and policing formerly done by the Governments of Ontario and Quebec could be provided by the R.C.M.P. in the same manner as it provides policing for the other provinces.

Some legal difficulties would, of course, arise from placing the civil code and common law under one legislative jurisdiction, such as a case involving residents on each side of the river, or where the principal in a case was resident on one side, but the transaction took place on the other. However, similar difficulties occur now in cases involving both the civil code and the common law in Quebec and the other provinces. The principles applied to these cases could be used as a guide. It should also be recalled that the same type of situation existed for some years before Confederation, when Upper and Lower Canada were united under one legislature.

More serious than the division of legal systems are the political problems that might arise in governing the territory. These cannot be easily predicted. Although the whole territory would show a reasonable ethnic, linguistic and religious balance, there would still be a predominant French-speaking majority on the north side of the river, and a predominant English-speaking majority on the south side. Could these two groups be successfully united under a single territorial government, or would the union be relatively unsuccessful, like the union of Upper and Lower Canada before Confederation? If so, a possible solution might be to create two territorial councils--one for each side of the river--though this would mainly defeat the purposes for which the territory was created. At any rate, the difference in traditions and political interests on the two sides argues for the continued existence of municipalities and of a large measure of local self-government on each side.

The argument that the creation of a federal territory would wipe out self-government in the area is, of course, setting up a straw man in order to knock him down. Few people would seriously propose the abolition or denial of political rights as in the District of Columbia or Canberra. But the argument does raise the difficult problem of the division between federal and local interests in the territory, and of balancing these interests through a proper system of representation. Certainly, the creation of a federal territory will bring with it no magic solution to the problem of governing a large and populous area.

Many of those who have proposed a federal territory would be quite willing to concede that a proper representation of local interests requires the continuation of local self-government, continued election of representatives to Parliament, and, as a substitute for electing representatives to a provincial legislature, the election of members to a territorial council. It has also been suggested by Mr. McDonald and Mr. Kear that the territory might be allotted several Senators. Mr. Kear has suggested that one of the territory's Members of Parliament might traditionally be included in the Cabinet and that another local constituency might form the basis for electing a permanent Speaker for the House of Commons.

Except for the Kear and Flaherty proposals of a fully organized provincial government for the territory, most proposals have been rather vague about the extent of local representation in the territorial government, and even whether there would be such a government. Probably the most detailed proposal was the one made by Mr. McDonald in his briefs to the bilingualism and Jones Commission. He has suggested a seven-man territorial commission consisting of a mayor or chairman elected for five years, three commissioners elected at large for six-year overlapping terms, and three commissioners appointed by the Ontario, Quebec and Federal Governments, the latter appointee to be a senior civil servant. The commission would have a single chief administrator comparable to a city manager.³⁵

It seems clear that a territorial government would be desirable, for at least two reasons. Otherwise, no special

governing authority would exist to take over the powers or provide the services now handled by the two provincial governments. Transferring these powers and services directly to the Federal level would very likely overburden Parliament. Secondly, the residents of the territory would lose the extra representation they enjoyed by electing members to a provincial legislature. For this reason, a territorial government should exist to which they could elect members.

The questions are, however, what should be the powers and form of this new government, and what should be the division of representation in it between the central government and the local residents, in order to give a proper balance of national and local interests?

As already pointed out, a territorial government could not have the same status and independence as a province because of the special nature of the Federal Government's interest in the control and development of its own seat of government. Its constitutional position should be more like that of the governments of the Yukon and the Northwest Territories. Hence the constitution and organization of their territorial and municipal governments might provide some useful precedents. Because of the size, complexity and large future population of the area, and the fact that a territorial government would eventually be taking over services formerly held by the provincial governments, its responsibilities would no doubt be great. One would expect it to possess most of the powers of a provincial government as outlined in Section 92 of the British North America Act. Yet

these powers should be granted by delegation from the Federal Parliament, rather than exercised exclusively by the territorial government. Similarly, even if the powers and structure of the territorial government are spelled out in the Imperial Act creating the territory, these should be made mainly amendable by the Federal Parliament acting alone, rather than by either requiring provincial consent or allowing the territorial government to amend its own constitution. Otherwise, the territorial government would become too independent of the Federal Parliament. So that it will not be regarded as having the same degree of independence as a province, the territory's representative body should be called a "council" rather than a "legislature", and it should pass "ordinances" rather than "laws."

For the same reason, and also because of the high proportion of federal civil servants in the area, the territorial government should not be controlled by political parties. Nor should it have a cabinet form of responsible government, which encourages the formation of parties. Yet, unlike Mr. McDonald, I think the territory's council should be fairly large in order to represent the great variety of interests in the territory, and to deal with the important "provincial" matters that will come under its jurisdiction. Since it should not have a cabinet as its executive body, provision could be made for an executive committee chosen from the council, as in the council of Metropolitan Toronto. The chairman of the council and its executive committee might be appointed by the Federal Government (just as the first chairman of the Toronto Metropolitan Council was chosen

by the Ontario Government). The Government might even name a Cabinet minister as chairman. Or the chairman might be elected by the territorial council (as the chairman of the Toronto Metropolitan Council is chosen now).

What should be the division between federal and local representation on the territorial council? Obviously the council should not be entirely federally appointed or there would be a serious danger of disregarding local interest. On the other hand, if the council were all locally elected, there would be a danger of its disregarding the national interest, just as locally elected councils in the area have done in the past, and as the elected council in Washington seems to have done before local government was abolished there in 1871. Mr. Flaherty has suggested in his article (p.23) that the federal and local interests might be represented by having a two-chamber legislature--a locally elected lower chamber and a federally appointed upper chamber with a veto power. While this would neatly divide the appointed and elected representatives, it might also divide federal and local interests too much. A more successful arrangement might be to have federally appointed and locally elected representatives in the same chamber and in about equal proportions. To promote a closer co-ordination of national and local interests, one or two cabinet ministers, the M.P.'s and Senators for the territory, and the members of the National Capital Commission who are not from the local area, could be appointed as federal representatives on the territorial council.

The local residents should perhaps be granted a majority

of the representatives, since the Federal Parliament would be legally superior to the council and would be financially predominant. It could exercise its ultimate legal control if necessary, and could exert a powerful influence through its financial support to the territory. It would therefore seem safe to provide for a locally elected majority at the beginning. If this did not work successfully, the Federal Government could change the arrangement by amending the constitution of the council. The local residents should, I think, be granted the right to elect their representatives directly to the council, in order to grant them the equivalent of their previous right to elect representatives directly to a provincial legislature, and also because of the importance and volume of the issues with which the territorial council would deal. One could not expect municipal councillors to serve double duty on the territorial council as they do on the Toronto Metropolitan Council.

Since the territory would be governed by an English-speaking majority, and would come under the ultimate control of an English-speaking majority in Parliament, it would perhaps be wise to slightly over-represent the French-speaking population on the territorial council. This could be done most easily by over-representing the population on the Hull side of the river. If it were done by constitutional provision, the likelihood of Quebec and the Hull side agreeing to the creation of the territory would be greatly increased.

What services would the territorial council provide? It would have the power to provide basically the same services

as the provinces now provide in the area, plus any federal powers and services coming under Section 91 of the B.N.A. Act delegated to it by Parliament. One would expect the provinces to continue to provide their services, by agreement with the Federal Government, until such time as the council is prepared to take on their administration and to reorganize them. For example, the council might decide at an early date to reorganize education in the territory in order to provide equality of services. If the promotion of bilingualism were stated as an objective of national policy in the territory's constitution, the council might decide to increase dramatically the extent of bilingualism in the territory, especially among the English-speaking population, by providing that in English-speaking areas the instruction in elementary schools should be given partly in French, and in high schools almost wholly in French, and vice versa in entirely French-speaking areas. It might also make adult classes in oral French and English much more easily available, and encourage the creation of a bilingual theatre group, bilingual radio and television stations, movie theatres, etc. It might even decide, with the Federal Government's help and in collaboration with Carleton and Ottawa universities, to organize a great national bilingual university or graduate school in the territory, like the Australian National University.

Since the territorial council would be expected eventually to deal with the whole range of services provided and taxes now levied by the provincial governments, there would still be plenty of room for local governments to continue to provide

municipal services. Their powers, of course, would now be delegated to them by the territorial government, and it would have the power to reorganize them, perhaps subject to federal approval.

The existing municipalities on each side of the river could continue to operate under their respective provincial laws until changed by the territorial council. It could then reorganize them and eventually adopt a comprehensive municipal code for the whole territory, picking the best features from the laws of Ontario, Quebec and elsewhere. The council might decide that the city governments of Ottawa and Hull should continue to exist but that there should be some consolidation of local government in other areas already urbanized or about to be urbanized--for example, that Hull should annex the area as far west as Aylmer and as far east as Gatineau, and that new city governments should be created for the three projected urban areas beyond Ottawa's Greenbelt. On the other hand, it might decide that the best solution to the urban problems of the area would be to leave the existing municipal boundaries relatively untouched and to take over and administer metropolitan-wide services directly. However, this would place a heavy burden on the territorial government. In view of the different traditions on the Ontario and Quebec sides of the river and of the physical splitting of the urban area by the river itself, this might also impose an undesirable degree of uniformity in metropolitan services without significant savings in cost and efficiency.

For these reasons, the council might decide instead to create two second-tier metropolitan councils on the Toronto model, one on each side of the river, representing the local municipalities in each area. Although this would have much to commend it from the point of view of preserving local government and at the same time solving urban metropolitan problems, it would still leave an administrative gap between the Ottawa and Hull sides of the river, and would create a four-level division of responsibility--federal, territorial, metropolitan and local. One might easily argue that this pattern would be even more complicated than the present three-level division--federal, provincial and local. But the difference would be that each level would be legally and constitutionally subordinate to the next, so that there would not be the same constitutional difficulty of divided jurisdiction. Also, there would be a cross-representation of interests at all levels. The local units would have representation on the metropolitan councils, and local residents would have representatives on the territorial council, who would meet and reach agreement with federal representatives on that council. A complex social situation, involving both diversity and interdependence, requires complex interlocking governmental arrangements. It would not be as complex as the four-level division that the Jones Commission proposal for an Ottawa regional government would have created. The territorial council would have the power to require joint action by the two metropolitan governments, and could control or take over any service that concerned both sides of the river,

such as pollution control and public transportation.

No matter what system of local government it created, the territorial council could be the focal point for the revision, approval, and implementation of the National Capital Plan. Although the National Capital Commission might continue as a manager of federal properties in the area, its planning functions could be transferred either to a committee of the territorial council, which would of course have both federal and local representatives, or to a new planning commission which would be an arm of the territorial council. The new commission could have representatives named by the federal, territorial and metropolitan (or local) governments. The present planning staff of the National Capital Commission could be taken over by the territorial council to work for either the planning committee or the new planning commission, and the Federal Government could afford to pay for all or most of the cost of this staff because of its saving on N.C.C. staff.

The National Capital Plan and any proposed revisions to it would, of course, have to be approved by both the Federal Government and the territorial council. Once the Plan was approved, however, the council would have the power to implement it fully and completely. It could require all local municipalities to prepare and implement detailed plans that are in general conformity with the Master Plan, in somewhat the same way as local municipalities in the Ottawa Planning Area are expected to prepare plans in conformity with the Official Plan for the Area.

With the promise of generous financial support from the Federal Government, the territorial council would therefore be in a position to call for and implement a bold and imaginative new Federal Capital Plan. This would require the creation of a revolutionary new network of freeways and other roads, as proposed in the Ottawa-Hull Area Transportation Study, the controlled development of the projected new cities beyond the Greenbelt and on the Hull side, and the reconstruction of the cores of Ottawa and Hull into a civic centre worthy of a national capital.

This outline of the changes that could come about under a territorial government is only a vision of what might be achieved. As long as the decisions are left partly to locally elected representatives--and this is the way it should be in a democracy--there is no guarantee that these objectives would be achieved. All one can argue is that they would be more likely to be achieved under a territorial government.

ALTERNATIVES

There are of course less far-reaching alternatives to the proposal for turning the National Capital Region into a federal territory. One is the idea of restricting the federal territory to the Ontario side of the river. This would solve the problem of the difference in legal systems, laws and traditions between the Ontario and Quebec sides of the river, and would avoid the difficulty of gaining Quebec's agreement to

ceding the necessary territory. It would also make unnecessary the creation of a second-tier metropolitan government on the Ontario side. However, it would not create as good a linguistic and cultural balance and would leave the French-speaking Canadians within the territory in a much smaller minority. Nor would it be as good a solution to the problem of implementing the National Capital Plan on the Quebec side. Nevertheless, the co-operation of the new territorial government, and the continuing co-operation of a reorganized National Capital Commission, with the Quebec Government and the municipalities on the Quebec side might go far toward solving this problem. For example, the Government of Quebec and the local municipalities might be persuaded to create an overall planning body and a consolidated or two-tier metropolitan government for the whole urban area on the north side, with powers to implement the National Capital Plan on that side. In order to promote co-operation, the N.C.C. could include representatives of these new authorities, and could invite them to propose revisions in their share of the Plan.

A much less far-reaching alternative was proposed to the bilingualism commission by the Saint Jean Baptiste Society of Eastview: that French should be made an official language in Ontario's legislature and municipalities. Alternatively, the Federal Government might achieve the objective of official bilingualism in the Ottawa area by attaching appropriate conditions to its grants to local municipalities for shared national capital projects. However, neither of these proposals would go far enough toward meeting the problems of bilingualism and

biculturalism in the area. They would only change the status of French in the conduct of local government. Many more educational and cultural changes would be required to make the area truly bilingual and bicultural.

Another proposal, which is restricted to an attempted solution of the purely planning problem, is that the Federal Government could achieve the objective of a much more imaginative redevelopment of the centres of Ottawa and Hull by a radical extension of its policy of purchasing or expropriating the land that it wishes to control. Now that its power to expropriate land for purposes of implementing the National Capital Plan has been constitutionally validated by the Supreme Court, it could buy or expropriate the whole of their business sections that are directly adjoining or opposite Parliament Hill. The capital cost of this move would be tremendous, but the Federal Government could eventually recoup a great deal of the cost through redeveloping these areas and reselling blocks of land to private interests for existing use or for reconstruction under appropriate regulations for conformity with its plan for redevelopment. If there were doubt about the constitutionality of the Federal Parliament's power to do this, it could perhaps buttress its case by declaring the reconstruction of the core of the national capital to be a "work for the general advantage of Canada," under Section 92, subsection 10 (c) of the B.N.A. Act, although it is doubtful whether the courts would accept this as being a "work or undertaking" within the meaning of the Act.

This proposal may not be as breath-taking as it seems

upon first impact, because the Ottawa-Hull Area Transportation Study projects a considerable rebuilding of the business core of Ottawa by 1986 in any case. It expects, however, that a good deal of the cost will be borne by the provincial and local governments. If the Federal Government expropriated and re-developed this area it would face its former difficulties of opposition from private interests, lack of co-operation from the provincial and municipal governments, and insufficient provincial and local sharing of costs.

An alternative proposal is the delegation of provincial and local planning and other powers to the National Capital Commission. This proposal has been made a number of times in the past--for example, by Mr. Cauchon in his report of 1922, and by Mr. Watson Sellar, former Auditor-General, in his evidence before the parliamentary Committee of 1956, where it generated considerable discussion. While it would be constitutionally possible for one level of government to delegate powers to the agency of another, it would be difficult in practice to co-ordinate the delegation of uniform powers from both of the provincial governments and all of the municipalities. The delegation of any extensive powers would also be politically unacceptable unless the National Capital Commission were in some way made directly representative of provincial and local interests in the area. For these reasons the delegation of power would very likely be restricted to a general control over the implementation of the National Capital Plan. Like the previous proposal, its adoption would provide no solution to the more general problems

of bilingualism and metropolitan government in the national capital.

CONCLUSION

A more general argument against a federal territory, which sums up most of the others, is that it is not needed: most of the problems it would solve are gradually being solved anyway, and the slight benefits to be achieved would not be worth the far-reaching constitutional, legal and political disturbances that would be involved. To test the validity of this argument, one must balance the time, effort, energy and cost that would have to be put into the creation of the new territory against the benefits that might be achieved; and this in turn requires a consideration of the extent to which the four main problems--revising and implementing the National Capital Plan, governing the metropolitan area, achieving a bilingual and bicultural capital, and generally overcoming the difficulties of divided jurisdiction--are now being solved or may be solved without the creation of a federal territory.

It seems clear that if a federal territory is not adopted, many changes and improvements must be brought about in order to achieve results that are in any way comparable with the results probable under a federal territory. With regard to revising and implementing the National Capital Plan, for example, the provinces and local municipalities must be brought much more intimately into the planning process. This could be

done most directly by restoring locally named representatives on the National Capital Commission and adding provincial representatives. Moreover, suitable machinery for local planning and metropolitan government must be created for the whole Ottawa-Hull area. For instance, the membership and jurisdiction of the Ottawa Planning Area Board should be extended to include all of the future urban area on the Ottawa side, or preferably to the boundaries of the National Capital Region, and the Ontario Government should ignore the Board's decisions only for very good reason. On the Hull side, there already exist two general planning committees, one each for the urban areas east and west of the Gatineau river, but they are insufficiently supported by the provincial government. The municipalities in these areas are under no compulsion to adopt or implement the committees' plans. Although the committee for the west side prepared a Master Plan report in 1964, an official of the Quebec Department of Municipal Affairs made this significant comment: "Its final report was handed in to the municipal councils concerned, and it is now up to these to carry out (or not carry out!) as they see fit the conclusion of the above report."³⁶

A revised National Capital Plan will not be implemented satisfactorily, nor the urban area governed adequately, until some form of metropolitan government is created on each side of the river. The political prospect for the creation of metropolitan governments on each side is, I would say, fairly good. Many of the municipalities on the Ottawa side have already

agreed that some form of two-tier metropolitan government is desirable. A move on the Ottawa side would no doubt stimulate, especially with support from the Quebec Government, a similar move on the Hull side. If no metropolitan governments are created, especially on the Ottawa side, the prospects for controlling the future development of the capital area are not good, and the proposal for a federal territory will become more and more attractive.

Regarding the bilingual-bicultural objective, the improvement of the national capital in this respect depends largely upon changes encouraged or required by the Ontario Government. The Government is already instituting changes in the school system designed to improve and extend the teaching of French, and it may decide to encourage or require the use of French as an official language. But it is unlikely that these changes will come fast enough or go far enough to approach what might be achieved under a federal territory. If progress in this respect is slow, the attitude of Quebec and of the French-speaking Canadians in the area may shift rapidly in favour of a federal territory.

The principle that the Federal Government should have ultimate and comprehensive control over its own seat of government would, of course, be impossible to satisfy without the creation of a federal territory. Under the present system the old constitutional difficulty of divided jurisdiction will inevitably continue. The creation of a federal territory is often said to be difficult, if not impossible, because the

co-operation and agreement of all interested parties--federal, provincial and local--would be needed. Yet even under the existing system a proper solution to all of the capital's problems requires many and continuous co-operative arrangements involving all of these parties.

The problem of balancing the probable advantages under a federal territory against the improvements that may take place in future without its creation is, however, a difficult one. No full-scale study has ever been made of the proposal, including the experience of federal districts elsewhere and a detailed consideration of the problems involved in creating and governing a federal territory. The bilingualism commission has been studying the National Capital Region and may issue a report with recommendations for it, probably late in 1967. However, it is likely to concentrate on the bilingual-bicultural aspects of the problem. For these reasons, the Government of Ontario may wish to consider putting the proposal on the agenda of a federal-provincial conference and asking that a study committee be set up. This committee might be composed of persons named by the Federal Government, by at least the two provinces concerned, and perhaps also by the two main cities in the area. It could be asked to consider the proposal for a federal territory and other possible solutions to the problems of divided jurisdiction, planning, metropolitan government, bilingualism and biculturalism in the National Capital Region.

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1. The Queen's Choice (Ottawa, 1961), p. 143.
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3. As quoted in Eggleston, p. 183.
4. Ibid.
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6. Ibid., p. 3.
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8. As quoted in Eggleston, p. 204.
9. Ibid., pp. 205-6.
10. Proceedings, No. 20 (July 26 and 30, 1956), pp. 1050-51.
11. Ibid., p. 1053.
12. Harold Munro v. National Capital Commission, judgment of June 28, 1966 (Supreme Court of Canada, pp. 10, mimeo.).
13. B. W. G. Marley-Clarke, "The Policy and Administration of the Municipal Grants Act, 1951, As Amended" (M.A. Thesis, Carleton University, 1966), Appendix.
14. For such purposes as urban redevelopment (\$9.0 million), the Civic Hospital (\$2.8 million), bridges and roads (\$1.4 million), and elimination of railway crossings (\$1.5 million). See City of Ottawa, 1966 Current Expenditure Budget, Part I, p. 3; and Minutes of the City Council, Feb. 28, 1966, pp. 690-1.
15. Ottawa Citizen, July 25 and 27, 1964.
16. See story by Donna Dilschneider, Ottawa Citizen, August 6, 1966.
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18. De Leuw, Cather, and Beauchemin-Beaton-Lapointe, Ottawa-Hull Area Transportation Study (1965), p. 152.

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19. Statistical Review: National Capital Region, p. 10.
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21. As quoted in Eggleston, p. 102.
22. His column of April 28, 1966, Ottawa Citizen.
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24. Fred. Cook, "The City of Ottawa and its Relations to the Federal Authority", Address before the Unity Club of Ottawa (March 24, 1909), p. 15.
25. The Federal Plan Commission of Ottawa and Hull, Report on a General Plan for the Cities of Ottawa and Hull (Ottawa, 1915), p. 13.
26. See, for example, proposal by E. Dandenault in Montreal Le Devoir, Feb. 18, 1965, and comment on this by Ottawa Citizen, Feb. 24 and 27; and editorial favouring the idea in Montreal Star, March 31, 1965.
27. Ottawa Citizen, Nov. 30, 1965. Dr. Marion also published an extended version in a French-American weekly, Le Travailleur, Oct. 21, 1965.
28. See stories and editorials in Citizen, March 5, 7, 28, 29, 1966.
29. Larry Smith and Company, Economic Prospects, National Capital Region, Ottawa, Canada, National Capital Commission, 1963, pp. 35-37.
30. D. C. Rowat, "Planning and Metropolitan Government," Canadian Public Administration (March, 1955).
31. Master Plan for Hull, p. 14.
32. These figures were derived from 1961 Census of Canada, Bulletin 1.3-10, Table 123-3, by totalling those from the British Isles who speak English only and both English and French and those of French origin who speak French only and both English and French. Unfortunately, one cannot get for the total number of people whose mother tongue is English the number who speak French, except by derivation from the number who speak English only. In any case, this figure would include many whose ethnic origin was from other than the British Isles, including even some of French ethnic origin.

Footnotes (Continued)

33. Le Droit, Aug. 1, 1963. On the other hand, the former mayor of Lucerne has spoken in favour of a federal territory.
34. Mr. McDonald told me that when he presented his brief before the Constitutional Committee in Quebec, he was sympathetically received and that his brief stimulated considerable interest and discussion.
35. Ottawa, Eastview and Carleton Local Government Review, Summary of Submissions, p. 57.
36. What's New in Planning, No. 7 (May, 1965), p. 20.

The Nature and Problems of a
Bill of Rights

by Dean W. R. Lederman

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The Nature and Problems of a
Bill of Rights

When we ask to have a Bill of Rights declared or defined in some authoritative legal form, what are we really seeking? What does this mean in the constitutional and legal context of a modern state, not to mention the wider international sphere of our interdependent world? My thesis appears deceptively simple -- that here we have nothing more nor less than the age-old demand of citizens for justice. To spell out a Bill of Rights is to give some sort of expression in general terms to the deep expectation and claim of the citizens of a country that their legal system shall be a decent and just one both in its general implications and its specific details. Alternatively, this claim for justice frequently appears as a demand for The Rule of Law, and to spell out what this phrase means in general and in detail is much the same thing as working out the meaning of a comprehensive Bill of Rights. In other words, to ask for The Rule of Law is to seek The Rule of Just Laws.

Whichever way one puts it, this is a wide-ranging search and also basically an ethical one. To pursue it properly means eventually to weigh the quality or value of all the principal parts of the legal system for the persons and circumstances contemplated by the many rules of law these parts respectively contain. I believe this to be very much worth doing, but the true nature and magnitude of the task ought not to be under-

estimated. More specifically, it ought to be appreciated that one does not finally or fully define and implement the values of a Bill of Rights or of The Rule of Law in one simple operation. Rather, adherence to the standards of a Bill of Rights or The Rule of Law is a complex process which permits and promotes progress to better things, but which involves also considerable legal change and adjustment at the hands of impartial courts and democratic legislatures from time to time, and indeed until the end of time. Each of us must live in a world crowded with other human beings and with things and events. There is much that remains the same but also much that changes, and we must pursue our fate taking account both of the constant and the changing factors, striving to control them for the better where we can. Accordingly, so far as this control can be exercised by the public order of a legal system, we must think in terms of an ongoing process rather than a single achievement. A Bill of Rights then may be a highly useful landmark on a continuing journey, but it is in itself neither a beginning nor an end. With this in mind, we now turn to some of the problems that a Bill of Rights poses for the processes and standards of a living legal system.

I. Rights and Duties Distinguished from Freedoms or Liberties

One of the characteristics of discussion and disputation about a Bill of Rights is that the words "right", "duty", "liberty" and "freedom" are critical terms and yet are extensively

used with vague and overlapping meanings. But if we are to understand the problems posed by a Bill of Rights, there must be some real degree of precision and discrimination about these meanings. Fortunately, analytical jurists like Sir John Salmond and Professors W. N. Hohfeld and Hans Kelsen have provided some discriminating terminology to describe the different types of jural relations which is helpful at this point. The basic jural conception, as Kelsen emphasizes, is that of duty--of a bond of legal obligation subsisting between two persons. A is bound by contract to pay B one hundred dollars--here we have a single bond of specific obligation subsisting between two designated persons which, looked at from A's point of view is a duty, and looked at from B's point of view is a right. The thing to notice for present purposes is how specific this legal relationship is both respecting the persons concerned and what the one is to do for the other. Of course the specific conduct in a right-duty relationship may be and often is negative rather than positive. When this is so oftentimes we find many persons on the duty side of the equation. For example, this is the basis of the conception of property in the law--A is the owner and occupier of Blackacre, which means that all other persons are under a duty to refrain from making entry on Blackacre except as A permits. Here we see that the holder of the right and the forbidden conduct are both definite and specific. And on the duty side of this picture all comers are affected by present obligation or duty, and this too is definite and specific. Also, much of the criminal law consists of closely defined prohibitions (negative

duties) addressed to all comers. Strictly speaking, it is to these relationships of presently subsisting specific obligation that the use of the words duty and right ought to be confined.

The conception of power in the law differs from that of duty only as a matter of timing. He who possesses a legal power not yet exercised is legally qualified to impose a specific right-duty relationship, though he has not yet done so. The classic example in private law is the agent who has been empowered to buy a house for his principal and thus to create reciprocal right-duty relations between his principal and a vendor in the future, if and when a suitable vendor turns up. The point for present purposes is that such capacity or power of an individual is potentially as specific in the regulation of persons and conduct as the duty is actually and presently specific in these respects.

What we should now notice is that some of the "liberties" or "freedoms" so-called which we greatly value belong juridically in this specific realm of well-defined legal regulations that is in the field of rights and powers in the sense explained. For example, "freedom" from arbitrary arrest is the total picture given by the interaction of certain rights and powers: the right of everyone to be free of forceful interference with his physical person by virtue of the torts of assault and false imprisonment, except where such interference is justifiable because it is the exercise of the overriding power of arrest for reasonable suspicion of crime, which power is given policemen and private citizens by the Criminal Code and the common law. Similarly the "right" to

vote is a power in the strict sense, at least between elections. So also the proposed Canadian Bill of Rights speaks of "the right to retain and instruct counsel without delay" (which is strictly speaking a power) and "the right to a fair hearing" (which is a proper use of the word right in the strict sense).

Perhaps enough has been said to establish that the right and the power, because of their specific and definite obligatory content, belong together for purposes of analyzing the implications of a Bill of Rights. For this purpose, rights and powers must be contrasted with liberties, freedoms or privileges which, while they are essential concepts of a legal system, nevertheless lack the specific and detailed obligatory character of duties and powers. In the proposed Canadian Bill of Rights we find declared the freedoms of religion, of assembly and association, of speech and of the press. (The latter two could be consolidated as freedom for the expression of information and ideas). What then is the juridical nature of these freedoms, liberties or privileges, as they are variously called?

The concept of liberties or freedoms in a duly precise scheme of legal terminology is the concept of residual areas of option and opportunity for human activity free of specific legal regulation. In such areas of conduct there are neither affirmative legal prescriptions nor legal prohibitions--a man is at liberty to act or do nothing as he chooses, free of obligatory instruction by the law either way. Now to call these areas or classes of conduct residual is by no means to disparage them, far from it. Indeed, in a democratic country they are large and

important areas, and one of the principal things a Bill of Rights attempts to do is to safeguard their essential boundaries. Only a relatively small portion of the total of actual or potential human activity is regulated in detail by specific legal duties, whether positive or negative, and life would be intolerable if this were not so. Indeed, just here lies one of the differences between democracy and dictatorship, for under a dictatorship there is in a sense too much law. The point is rather aptly made by the saying that, in a democratic country what is not forbidden is permitted, whereas in a totalitarian one what is not forbidden is compulsory.

But, if liberty is a matter of option and opportunity free of legal instruction, in what sense do liberties or freedoms touch and concern the law or depend on it? To take just two examples, why is a person's liberty to express a political opinion or worship as he pleases any concern at all of the legal system? Certainly, such options and opportunities are not directly created or specifically defined by the law or the constitution, as is my power to vote or my right to collect one hundred dollars from a person who has contracted to pay me this sum. Nevertheless, there are two important senses in which freedoms or liberties depend on the legal system. Though they are not the specific creation or gift of the law, they have their legal features and hence are properly included in the scheme of working jural ideas.

In the first place, by the specific prohibitions found in the classic crimes and torts, the legal system ensures a general state of public peace and order, and thus makes the areas of

freedoms and liberties meaningful as realms of peaceful choice. In other words, the law of crime and tort safeguards each man's areas of option and opportunity against private coercion at the hands of other persons. My freedom (within broad limits) to do what I please with my own parcel of land would mean little without the laws against trespass and violence. But note also that the laws against trespass and assault tell me nothing whatever about the use I am to make of my land, if any. They just leave me there in peace. Accordingly, peaceful human activity in such areas of freedom depends on these basic conditions of law and order. In this general sense of dependence on the portions of the legal system relevant to peace and order, it is proper to speak of freedom under law.

In the second place, we depend on the law to define the outside limits of the respective areas of freedom or liberty in the total realm of actual or possible human activity. What is not forbidden is permitted, but certain things must be and are forbidden. In the words of Chief Justice Duff:¹

The right of public discussion is, of course, subject to legal restrictions; those based upon considerations of decency and public order, and others conceived for the protection of various private and public interests with which, for example, the laws of defamation and sedition are concerned.

To speak generally, this means that when you have defined the extent of specific legal regulation in terms of exist-

ing duties, ipso facto you have drawn the outside boundaries of the areas of liberty or freedom. To delineate the unregulated area you must first define the regulated area, to do which is strictly a legal matter. So, in this residual sense the extent of liberty or freedom in some given respect is a matter of legal definition and properly has its place in the working concepts of the lawyer or jurist. For example, as Chief Justice Duff points out, the law forbids the uttering of defamatory, seditious or obscene words, and there specific legal prohibition stops. At the boundary so marked freedom of expression starts, and now the law takes no hand at all except to stop riots or other breaches of the peace. Beyond this boundary the law does not tell a man what to say or what not to say, nor does it compel anyone else to listen to him or to assist him to be heard by publishing in some way what he has said. So far as the law is concerned, he is on his own, and the factors and pressures involved in his choices and efforts concerning self-expression are extra-legal ones.

This residual and unspecified character of liberties or freedoms in relation to specific legal obligation is critical when we come to consider the relation of public legislative power to liberties or freedoms. Freedom of expression, for example, is not a single simple thing that may be granted by some legislature in one operation--it is potentially as various, far-reaching and unpredictable as the capacity of the human mind. Freedom of expression is the residual area of natural liberty remaining after the makers of the common law and the statute law have encroached a little by creating inconsistent duties as explained. This line

of thought has important implications for the distribution of law-making powers in a federal country like Canada. It is difficult if not impossible to consider freedom of expression as a single simple thing that is the subject of a grant by either the federal Parliament or the provincial legislatures. The federal question is not which legislative authority may give it, but rather which may take it away in this or that specific respect in the manner explained. In the words of Mr. Justice Rand:²

Strictly speaking, civil rights arise from positive law; but freedom of speech, religion and the inviolability of the person, are original freedoms which are at once the necessary attributes and modes of self-expression of human beings and the primary conditions of their community life within a legal order. It is in the circumscription of these liberties by the creation of civil rights in persons who may be injured by their exercise, and by the sanctions of public law, that the positive law operates. What we realize is the residue inside that periphery. Their significant relation to our law lies in this, that under its principles to which there are only minor exceptions, there is no prior or antecedent restraint placed upon them: the penalties, civil or criminal, attach to results which their exercise may bring about, and apply as consequential

incidents. So we have the civil rights against defamation, assault, false imprisonment and the like, and the punishments of the criminal law; but the sanctions of the latter lie within the exclusive jurisdiction of the Dominion. Civil rights of the same nature arise also as protection against infringements of these freedoms.

So, to repeat, the question for Canada is: Which legislative body may encroach on what areas of liberty and to what extent? In the example just used, the limitation of freedom of expression, the encroachments made by the crimes of sedition or treason are found in the Criminal Code of Canada, whereas those made by the tort or delict of defamation are within provincial legislative power. So, in this sense of the power to make some specific encroachments, the present constitutional position in Canada would seem to be that legislative jurisdiction over freedom of expression is somewhat divided.

But, having reached this point, one finds that there may be different kinds of encroachment--some justifiable and others not justifiable, the latter being trespasses on essential parts of the areas of freedom. The necessary implication of the Alberta Press case³ seems to be that there is an essential core of the area of freedom of expression that must be preserved from legal encroachment if our national democratic Parliament is to have the motive power of a free public opinion that is for it the breath of life. Thus provincial legislative encroachments may not breach this inner boundary, though they may pass an outer

boundary from the point of view of defamation and civil compensation. Furthermore, as Mr. Justice Abbott noted in *Switzman v. Elbling*,⁴ this reasoning of Chief Justice Duff in the Alberta Press case is a double-edged sword--for the sense of it is necessarily to imply that the same inner boundary should stand likewise against legislative encroachment by the federal Parliament itself. If this is correct, then the Supreme Court of Canada is specially entrenching essential freedom of expression by necessary implication in its interpretation of the British North America Act. Special entrenchment here means that duties or powers inconsistent in essential respects with freedom of expression may not be enacted by the ordinary statutes and legislative majorities of either a provincial legislature or the federal Parliament. Only a constitutional amendment, as in the United States, could then effect this object.

A Bill of Rights in a federal context then requires us to think in terms of withholding from both Parliament and the provincial legislatures legislative power to encroach upon essential parts of the areas of freedom by ordinary statute. Yet this cannot be the whole picture, for freedom cannot be unlimited--some legislative body must have some degree of power to impose by ordinary statutes certain limitations desirable in the public interest. Obviously, this power of enacting necessary limitations for this or that type of freedom may be assigned to the provincial legislatures or the federal Parliament or indeed may be shared by both as concurrent powers under the double-aspect doctrine well known to our constitutional law. Full implementa-

tion of a Bill of Rights in Canada would seem to call for attention to both these matters. We must assign some degree of power to make legislative encroachments by ordinary statute on this or that field of liberty, yet also we should draw an inner boundary for such fields beyond which neither Parliament nor a provincial legislature can pass. Breaching the inner boundary would require constitutional amendment. So far, with the possible exception of Mr. Justice Abbott, the judges of the Supreme Court of Canada seem to be addressing themselves just to the problem of distributing legislative power to limit freedom between Ottawa and the provincial capitals, without erecting an inner fence against such limitations by ordinary statute coming from either direction. Even so, just to distribute limiting power is difficult enough, because areas like those of freedom of expression and religion are so wide, various and indefinite in extent that they may be approached from many different aspects with a view to limitation. The application of the double-aspect doctrine to confer concurrent powers would seem, to some extent at least, to be unavoidable in the nature of these situations. By way of contrast, problems in the distribution of powers to regulate banking or the solemnization of marriage, to take just two examples from the British North America Act, are relatively much more simple.

These considerations serve to remind us that the problem of the amendment of the Canadian constitution arises if one contemplates a Bill of Rights for Canada, for such amendment would likely be necessary if we are to have a specially entrenched Bill of Rights. It is doubtful how far the Supreme Court of

Canada could or would go in developing such entrenched clauses by necessary implication, though some people think the wise thing to do would be to leave the matter to the Supreme Court for gradual development along the lines already started by Chief Justice Duff. On the other hand, if there is to be formal constitutional amendment, under the present state of our constitutional law probably this requires the unanimous concurrence of all the provincial legislatures and the federal Parliament--a condition not likely to happen. This points up our need for some constitutional amending process like that which obtains in the United States or Australia. Prime Minister Diefenbaker's proposed Canadian Bill of Rights is to be an ordinary statute of the federal Parliament, and so would enjoy no special constitutional status. It would not limit the provincial legislatures nor, indeed, preclude a later repeal by the federal Parliament itself. Nevertheless, a Canadian Bill of Rights may be well worth doing as an ordinary federal statute. My own reasons for thinking this to be so will appear later. Meanwhile, we turn to another class of problems posed by attempts to give effect to a Bill of Rights, whatever its constitutional or legal form.

II. The Bill of Rights as a Declaration of General Principles

A Bill of Rights is usually expressed in very general terms, that is, in words that denote concepts running at a high level of abstraction or generality. A comprehensive set of such principles, for instance as one finds them in the United Nations

Declaration of Human Rights,⁵ reaches potentially to every part of the legal system of a modern country. In fact, the United Nations Declaration specifically states that "The General Assembly Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations" Then come thirty articles which are in effect standards to which the legal system of a democratic country in all its departments and details should conform. For example, consider the following:

Article 9

No one shall be subject to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

To determine the way in which we measure up to these principles

or work them out in detail in Canada, one must review the judicature statutes and also the whole of the codes of civil and criminal procedure, including evidence, confessions, burden of proof, bail, habeas corpus, and so on. We discern when we do this for instance that much of the secret of the fairness of a British system of criminal trial lies in the independence of the judges and such specific detailed rules as the following: the charges must be precise and detailed so that the accused knows exactly what allegations he must meet; the prosecution must prove the guilt of the accused beyond a reasonable doubt; a confession secured by the police or anyone else cannot be used against the accused unless it was given by him voluntarily. It is apparent that the general principles of articles 9, 10 and 11 would mean little or nothing unless they were implemented in detail in some such way as this.

Indeed, here is the key to the reasoning of those who claim that general declarations of rights are either unnecessary or useless. The argument goes like this: if you have the necessary mass of detailed procedures and rules for fair trial, then you do not need highly abstract general exhortations on the subject. On the other hand if you do not have this detailed legal equipment for fair trials, abstract declarations, whatever their legal form, will not avail the little man who finds himself in the hands of the police. There is a lot in this, and I am enough of a common-law lawyer that if I had to choose between the high-sounding general declarations and the volumes of detailed rules about the judicature and procedure, I would take the latter. But

do we have to choose? Is it not a positive advantage to have both? It is true that such general principles mean little unless worked out on a massive scale in precise detail, and yet we need also to appreciate the general implications of what it is that we are doing in detail. Particular detailed rules cannot be properly understood or kept in their respective places as part of a reasonable system unless we pursue the general implications involved as far as the mind can reasonably reach. Only thus can we bring order and purpose to the mass of detail in our laws. Dean Roscoe Pound, possibly the leading philosopher of the common law in our time, has said:⁶

William James tells us that "the course of history is nothing but the story of man's struggle from generation to generation to find the more inclusive order". Certainly such has been the course of legal doctrine In law this means an endeavour to eliminate the arbitrary and illogical; a conscious quest for the broad principle that will do the work of securing the most interests with the least sacrifice of other interests, and at the same time conserve judicial effort by flowing logically from or logically according with and fitting into the legal system as a whole.

The point is that general principles and their detailed implications go together in a legal system. They are complemen-

tary one to the other. There is necessarily a constant interaction between the general and the particular in living legal processes. For instance, when one reads the thirty articles of the Universal Declaration of Human Rights of the United Nations, one can see that most if not all of these very general principles are derived from (that is, logically express the general implications of) the modern constitutions and legal systems of the Western democratic nations like Britain, Canada, the United States and France. For example, article 25 of the Universal Declaration states in part:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

This expresses in abstract terms the purport of the development of the welfare state in Western countries during the past one hundred years. It gives the general implication of thousands of pages in the official books of statutes and regulations covering children's allowances, old age pensions, health and unemployment insurance, workmen's compensation, graduated income taxes, and so on.

This reasoning affords the chief basis for my own view that the proposed Canadian Bill of Rights is well worth

doing, even though it takes the form of an ordinary federal statute--a relatively modest form for such a document. It would still be an authoritative expression by the Canadian Parliament of valid general standards, and as such would give leadership and promote education in these matters, though strictly speaking its application is confined to the federal part of the Canadian legal system as defined in the British North America Act. Law is not primarily a matter of coercion and punishment at all, it is primarily a matter of setting standards for society that attract willing acceptance because they offer some measure of justice.

Nevertheless, in this imperfect world, there are difficulties in following through the implications of general principles for specific and detailed legal action that should not be underestimated. A Bill of Rights does not implement itself, it needs to be worked out in detail by judges, legislators, lawyers and citizens who possess only imperfect powers of reason and moral insight for the task. One of the difficulties with general principles is that at times they overlap and conflict so far as their relevance to particular problems is concerned. For example, the Universal Declaration says in the first part of article 23 that "Everyone has the right to work" and in the last part that "Everyone has the right to form and join trade unions for the protection of his interests". The union shop or even the closed shop may well be vital to the effectiveness of trade union organizations, and yet they deny the right to work of the man who refuses to meet the conditions of union membership. The right-to-work laws being promoted in several of the states of

the United States are directed against the union shop and the closed shop. Which rights have precedence here, those of the individual man or the organization man? And what of the interests of the whole community of citizens? Also, to give another example, the Universal Declaration speaks of freedom of religion and of freedom to manifest one's religion "in teaching, practice, worship and observance".⁷ But it speaks also of the right to medical care,⁸ education⁹ and of the right to life itself.¹⁰ Are parents entitled in the name of free observance of sincere religious beliefs to deny to a child the blood-transfusion that would save his life, or to deny him all normal education because the state school system is regarded as wicked?¹¹

Such issues of conflict arise again and again in any legal system, whether or not there is a formal Bill of Rights. One of the principal tasks of our legislators and judges is to work out compromises that resolve such conflicts so far as possible on fair terms, and to give these compromises expression in legal decisions and rules. A Bill of Rights very properly exhorts us to direct our minds to the general implications for justice of detailed legal action, but it is quite illusory to think that a Bill of Rights will do away with difficult conflicts between different persons and groups and eliminate the need for painful compromise at many points in the operation of our legal system.

III. Conclusion: The Importance of Procedure

From what has been said in the preceding parts, it is apparent that the legal system must in some measure undergo a continuous process of adjustment to changing conditions in our society. New conditions give rise to new conflicts of interest, so that fresh compromises are called for. Old equilibrium points established by law between freedom and restriction may require to be reviewed and altered. The primary agencies for making these adjustments are the legislatures and the courts, so that in the end the best constitutional guarantees of justice we can hope for are those that safeguard the democratic character of our legislative bodies, the high quality and independence of the courts, and the fairness of procedure in both. It is principally in these ways that our constitutional processes seek to provide for the best that man can accomplish in reasonable thought, social research and moral insight as the basis for official decision, however partial these powers of reason and insight may be from time to time. In particular, an independent judiciary of high quality would seem a necessity for the tasks of adjusting and also safeguarding the inner boundaries surrounding the essential core of our freedom.

Footnotes

1. Reference Re Alberta Statutes, (1938) S.C.R. 100, at p. 133.
2. Saumur v. City of Quebec, (1953) S.C.R. 299, at p. 329.
3. See *supra*, footnote 1.
4. (1957) S.C.R. 285, at p. 328.
5. The Universal Declaration of Human Rights is given in full in (1949), 27 Can. Bar Rev. 204.
6. Juristic Science and Law (1918), 31 Harv. L. Rev. 1047, at pp. 1062-3. See also Sir F. Pollock, A First Book of Jurisprudence (2nd ed., 1904), p. 81.
7. Art. 18.
8. Art. 23.
9. Art. 20.
10. Art. 3.
11. Perepolkin v. Supt. of Child Welfare (No. 2) (1957), 11 D.L.R. (2d) 417.

The Provinces and the Protection of

Civil Liberties in Canada:

The Province of Quebec

by Professor Edward McWhinney

February, 1967.

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The Provinces And The Protection Of Civil Liberties In Canada

The Province Of Quebec

Introduction

The within study, which stems from detailed studies carried out by Armand de Mestral, a recent McGill University law graduate, under my personal supervision, surveys the law and practice in the Province of Quebec as to the protection of Civil Liberties. The subject assumed an especial importance during the 1966 Provincial elections in Quebec because both main parties -- the Lesage Liberal government, and Daniel Johnson's Opposition Union' Nationale party -- became publicly committed to strengthening and protection of Civil Liberties. Mr. Daniel Johnson's party, in particular, called for establishment of a Provincial office of Ombudsman, and also for enactment of a Provincial Bill of Rights. The more radical, younger, intellectual elements in Quebec society, especially in the Law Faculties and in the Universities, are strongly interested in Civil Liberties, and they seem to insist, too, on fairly concrete implementation of any Provincial governmental proposals in this area through the devising of appropriate institutionally-based arrangements. Hence, all the talk about a Provincial constitutional Bill of Rights, preferably one "entrenched" on a legal basis still to be determined but not beyond the powers of imaginative Provincial constitutional lawyers to devise; and hence all the talk about an Ombudsman, a Provincial Conseil d'Etat and the like.

A Provincial constitutional Bill of Rights would probably overlap with the area of federal (Dominion) constitutional

power. Any question of a constitutional conflict thereby, however, would seem to be essentially academic in character. Now that the old-fashioned, essentially abstract, exclusive, "watertight compartments" view of Dominion-Provincial power has receded into history, it would be a matter of enquiring whether there is any direct conflict or incompatibility, in the concrete, between a Provincial constitutional Bill of Rights and a federal (Dominion) bill, such as the 1960 federal measure now on the statute books or any other federal bill that might be adopted in the Future. A Provincial constitutional Bill of Rights might well go beyond the protection included in a federal bill; or it might fall short of the scope of the federal bill. But a positive, direct, conflict between a Provincial Bill and any federal bill, would seem, by definition, to be excluded, even assuming anyone had any constitutional "interest" or any sufficient jurisdictional locus standi to raise a valid constitutional challenge to the Provincial Bill.

Of even more interest to Common Lawyers in the English-speaking Provinces, however, will be the initiatives already taken by the Office for Revision of the Quebec Civil Code to draft a declaration of Civil Rights for inclusion as part of the planned text of the revised Quebec Civil Code -- preferably the opening articles of the revised version. It has long been a truism of Common Lawyers, after Dicey, that a good deal of what is conventionally considered as the area of Civil Liberties, is not, in conventional analytical jurisprudential terms, public or constitutional law, but rather ordinary, private law. This

was confirmed dramatically in the Canadian Supreme Court majority decision in Roncarelli vs. Duplessis in 1959, [(1959) 16 D.L.R. (2d) 689; discussed and critically analysed in McWhinney, (1959) 37 Canadian Bar Review 503], where a great Civil Liberties decision raising important public and constitutional law implications for Canada, was arrived at by the Common Law majority, (with the two French-speaking, Civil Law judges on the Court dissenting), as it were interstitially to the Quebec Civil Code, through application of Article 1053 of the Code, the main provision of the Code as to Civil Delicts (Torts). The extra range of flexibility of the Civil Code's general provisions and amply reflected in the new declaration of Civil Rights, proposed to be included in the revised Civil Code of Quebec; for these provisions, in the full stream of Continental European Civil Law jurisprudence and doctrines, seem to go well beyond the English-derived Common Law's private law-based protections to individual liberties in the conventional Common Law areas of Contracts, Torts, Real Property, and the like. Given imaginative and sympathetic interpretation and application by the courts, the new declaration on Civil Rights, if inserted in the revised Civil Code of Quebec, could be an important supplement to a Provincial constitutional Bill of Rights -- in no way conflicting with it, and in many ways effectively going beyond it. Since the current Quebec proposals in this area are part of a more comprehensive Quebec approach to Provincial constitutional novation and to law reform generally, any new Ontario steps or initiatives in the direction of institutionalised protection of Civil Liberties in the Province should also be viewed, as far as possible, in the broader context of Provincial constitutional and

legal reform as a whole.

1. Recent Political Developments in Quebec affecting Civil Liberties

The advent of the Liberal Government in 1960 brought no immediate change in the law with respect to Civil Liberties. During the first two and a half years of the Liberal Government no attempt was made to legislate within the field of Civil Liberties, however, considerable pressure was brought both from the Negro and Jewish Communities, in the Province upon the Government. Of particular concern to these groups was the Quebec Hotels Act which, while requiring all restaurants and hotels to receive "travellers", had been interpreted in the Christie Case¹ as permitting discrimination in taverns since they were not specifically covered in the act. The proposal of the Lesage Government early in 1963 to close this gap in the Hotels Act gave rise to considerable public controversy, not only over this act but concerning the whole field of Civil Liberties within provincial jurisdiction. La Presse, on February 1, 1963 reported the request of the Negro community to the Prime Minister to consider legislation in Ontario where the Civil Rights Commission had been established in June of 1962. On February 5th, Le Devoir reports an interview which Premier Lesage gave to two leading trade unionists, Jean Marchand and Louis Laberge. It is reported that while Premier Lesage declared himself against all forms of discrimination, and declared the willingness of his government to consider further legislation in the field, the Premier declared some reservations as to the value of the general law against

discrimination. However, the new Hotels Act² was adopted by the Legislative Assembly on June 26, 1963. A year later, after considerable trade union pressure, the Act Respecting Discrimination in Employment³ was passed on July 30, 1964. The Lesage government did much to create a new atmosphere within the public administration and did much to create a public climate favourable to the respect of Civil Liberties, however, these two acts constitute the only legal initiatives taken by that government.

In the last months before the election campaign in 1966, the Hon. Paul Gérin-Lajoie and Hon. René Levesque both made references on the necessities on further legislation in this field. During the campaign itself, apparently in response to demands of the Union Nationale for an Ombudsman and a Bill of Rights, Liberal campaign speeches promised both an Ombudsman and the Civil Rights Commission.⁴ Speaking on May 5, 1966, reported in *La Presse*,⁵ the Minister of Justice, Claude Wagner, stated that he personally preferred a special court to judge infractions to the Bill of Rights rather than an Ombudsman or a Commission. On May 18, 1966, the *Le Devoir* reported that Premier Lesage, while addressing the American Society of Newspaper Editors, had stated that the new Bill of Rights which his party planned to implement upon re-election would include a guarantee of the freedom of the press.

A considerable emphasis in the Union Nationale Party's campaign in June 1966 was based upon civil rights. It can be noted that on the 4th February, 1966, the Negroes Citizenship Association complained against the failure of

the Quebec Government to take action on civil rights legislation despite previous statements by the Hon. Paul Gérin-Lajoie and the Hon. René Levesque.⁶ On the 8th of February, 1966, La Presse reports that the Montreal Council of Women had complained that no reply had been received from the Government to their brief on demanding a Human Rights Code, which they had submitted to the government in late 1963. Union Nationale leaders made civil rights legislation an important aspect of their party's programme. The Hon. Daniel Johnson in a widely reported speech on the 20th of March, 1966, to the Negroes Citizenship Association in Montreal, declared that his government would take all measures necessary to create the institutions needed to protect human and minority rights. In this respect he promised that his party, if elected, would establish the office of Ombudsman, insert in the Ministry of Education Act (Bill 60), a guarantee of education to all, and would pass a charter of human rights preventing discrimination in employment, housing, education and guaranteeing free access to all public places.⁷ In the party programme the Union Nationale promised to pass a Quebec Bill of Rights and create the office of Ombudsman:

Justice Et Libertés Civiles

Les Solutions

Pour revaloriser l'administration de la justice au Québec l'Union nationale propose:

I - Une Charte Québécoise Des Droits De L'homme

L'Union nationale fera insérer dans la constitu-

tion du Québec une charte proclamant et garantissant les droits fondamentaux et les libertés essentielles de la personne humaine.

Quels que soient sa race, sa couleur, sa religion, toute personne jouira de la liberté de religion, de parole, d'association et de presse, aura droit à la vie, à la liberté, à la sécurité, à la possession et à la jouissance de ses biens, à la protection de la loi et à l'égalité devant la loi.

II - Institution D'un Ombudsman Ou Protecteur Du Peuple

Toute personne qui se croira léseeé par des actes du pouvoir ou de l'appareil administratif pourra s'adresser au protecteur public afin de faire établir et reconnaître ses droits.

Again, the Union Nationale party also promised to pass the Charter of the Rights of Children based on the U.N. Declaration on the Rights of Children (1959).

In one of his first major addresses after his party's electoral victory of May 1966, Premier Daniel Johnson, in his speech to the American Bar Association, on August 8th, 1966, dealt at length with the problem of civil liberties. He declared that his government would soon proceed with the passing of a Quebec Bill of Rights as promised. Both Le Devoir⁸ and La Tribune de Sherbrooke⁹ reported that this Bill of Rights would be included in a new Constitution of Quebec. Three other papers, however,¹⁰ reported that the Bill of Rights would be included in the Civil Code: while the two English papers, The Star and the

Montreal Gazette, reported the Premier's promise of the Bill of Rights, but without indicating whether it would be a part of the new Provincial Constitution or of the revised Quebec Civil Code. The Premier also announced that the Province would have an Ombudsman at an early date. It should be noted that Premier Johnson repeated this intention in a speech on September 26.¹¹

The interest of the two major parties in the Provincial election campaign of 1966, in the idea of enacting a Bill of Rights, is something rather new in the history of Quebec politics.

A most interesting example of the growing public concern for Civil Liberties is to be found in the brief recently presented to the Committee of the Quebec Legislature studying the Constitution, by the combined labour movements of the Province (C.S.N., F.TQ., U.C.C.) One of the seven major demands of the brief was for a "Declaration of liberties and fundamental rights".

One of the most concrete steps towards broader legislative protection of Civil Liberties, however, is represented by the draft articles presented to the Office of the Revision of the Civil Code on September 29, 1966 by its Committee on Civil Rights.¹² It is to be expected that these articles may form part of the text of the new revised Quebec Civil Code, still in process of drafting.

2. Doctrinal Legal Writing in Quebec Concerning Civil Liberties

Professor Frank Scott is well known for his life-time interest in Civil Liberties. Yet only one of his articles, "The Bill of Rights and Quebec Law"¹³ has been concerned with the specific problems of Civil Liberties existing under the Code.

Interest in civil rights was clearly spurred by the passage of the Canadian Bill of Rights, and several articles appeared in Quebec Legal Journals discussing this Act. Civil rights are touched upon in articles concerning the Quebec Schools system, one of the best of these being by Professor René Hurtubise, "La confessionnalité de notre système scolaire et les garanties constitutionnelles".¹⁴ In 1955 a student of the University of Montreal, André Biron, published an article, "La discrimination raciale dans le commerce",¹⁵ in which the author discussed and condemned the Christie, and Loew's Theatre, cases. In 1957 Professor Roger Comptois published an article entitled, "De la prohibition d'aléner dans les actes onéreux: La Clause Raciale".¹⁶ In this article Professor Comptois declared with apparent approval that clauses in deeds of sale prohibiting subsequent transfer of property to persons of specified races were fully justified under the Quebec doctrine of freedom of contract; and he also suggested that any statutory enactment prohibiting racial discrimination should be restrictively interpreted since in derogation of the Common Law

doctrines. In 1963, André Cossette published an article entitled, "Les notions d'égalité et dans la discrimination de droit successoral de la province de Québec"¹⁷ which dealt, tangentially, with the problems of discrimination under the Quebec law of successions. In 1957 two students at the University of Montreal published an article entitled: "La discrimination raciale et la famille nombreuse"¹⁸ which goes no further than the article by Biron. A more complete discussion of civil liberties and the loss of successions is to be found in the thesis of Professor André Morel, Les limites de la liberté testamentaire dans le droit civil de la province de Québec.¹⁹ On the other hand, little direct guidance as to the extent of the protection of Civil Liberties under the private law of Quebec can be derived from the main doctrinal writers, such as Mignault, Droit Civil Canadien, the Trudel series, or Professor Louis Baudoin's well-known work Le droit civil de la province de Québec.

The article by Professor Frank Scott (already referred to), warrants detailed consideration. Professor Scott bases his argument on the very broad right to damages, both moral and material, which exists under the civil law. He states:

"The civil law has evolved the general principle of liability for wrongs, applicable to all situations that present themselves. It is a law of delict and not of delicts; new sets of facts may arise in society to which the rule has never been applied before, yet which it is adequate to cover."²⁰

It is Professor Scott's thesis that article 1053 of the Civil Code²¹ "underpins the basic civil rights".²² Thus Professor Scott considers that judicial discretion exercised to accept the infringement of basic civil liberties as an actionable wrong would provide more than an adequate protection for these liberties. The strength and originality of Professor Scott's thesis has been to show how existing rules of the civil law could be used to offer a broad protection to all basic Civil Liberties.

Professor Scott has thus defined and used the technique in the Roncarelli Case.²³ The weakness of Professor Scott's thesis, however, would seem to be that it leaves protection of Civil Rights to the judges. Professor Scott also relies on the fact that the judges in the Province of Quebec have wide latitude to rule on the matter on the grounds of public order and good morals under article 13 of the Code, if they care to exercise the power.²⁴ He also points out that the doctrine of "abuse of rights" is recognized to a far greater extent in the civil law than in the common law.

3. Quebec Provincial Legislation Respecting Civil Liberties

The principles of private law, to be found in the Civil Code of the Province of Quebec, will be discussed in succeeding chapters. Two articles of the Civil Code, in particular, however, may be cited at this point:

"Article 13. No one can, by private agreement, validly contravene the laws of public order and good morals.

Article 1053. Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill."

In addition, there are several special statutes enacted by the Quebec legislature.

The Hotels Act²⁵ regulates hotels, restaurants, lodging houses, camping grounds, etc. Article 8 of this Act states:

"No owner or keeper of a hotel, restaurant or camping ground shall directly or through his agent or a third party:

- (a) refuse to provide any person or class of persons with lodging, food, or other services offered to the public in the establishment; or
- (b) exercise any discrimination to the detriment of any person, or class of persons as regards lodging, food or any other service offered to the public in the establishment, because of race, belief, colour, nationality, ethnic origin, or place of birth of such person, or class of persons."

This act does little more than reproduce the old Licensing Act²⁶ which was interpreted as not including taverns; it is still not certain whether taverns are covered by the new act.

The Act respecting discrimination in employment²⁷ is a comprehensive measure, introduced by the Lesage government and relating to civil liberties. Section 1,(a), defines discrimination as:

"Discrimination - any distinction, exclusion or preference paid on the basis of race, colour, sex, religion, national extraction, or social origin, which has the effect of nullifying or impairing the equality of opportunity or treatment in employment or occupation; but any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination;"

The Act does not apply to anyone who has fewer than five employees, and does not apply to non-profit associations or corporations operating exclusively for religious, philanthropic and educational purposes, etc. More surprising, the Act does not cover any person "employed as manager, superintendent, foreman or representative of the employer in his relations with his employees, or directors or officers of a corporation." Section 2 of the Act prohibits any discrimination on the part of an employer in the hiring or firing of his employees. Section 3 of the Act requires

that no association of employees or employers should resort to discrimination in admitting or expelling members. Prosecutions under this act may be taken either by the provincial crown, or by private persons after authorisation by the Quebec Labour Relations Board. A weakness of this Act would seem to be that it applies only to employees at the lower levels and not to foreman or staff members: again, the fine of \$25 to \$100 does not seem calculated to constitute a serious prohibition.

Two other Acts deserve special mention.

In the Freedom of Worship Act²⁸, sec. 2

"It does not constitute free exercise or enjoyment of religious profession and worship

- (a) to distribute, in public places or from door to door, books, magazines, tracts, pamphlets, papers, documents, photographs or other publications containing abusive or insulting attacks against the practice of religious profession or other religious beliefs of any portion of the population of the province, or remarks of an abusive or insulting nature respecting the members or appearance of a religious profession; or
- (b) to make, in speeches or lectures delivered in public places or transmitted to the public by means of loudspeakers or other apparatus, abusive or insulting attacks

against the practice of a religious profession or religious beliefs of any portion of the population of the province, or remarks of an abusive or insulting nature respecting the members or appearance of a religious profession;"

This Act, although not colourable on its face, was seemingly passed in order to prevent witnesses of Jehovah from disseminating their religious tracts after the Saumur decision had upheld their right to do so. It was reproduced in the Revised Statutes of 1964 without alteration.

The Press Act²⁹ states in Article 2:

"Every person who deems himself injured by an article published in a newspaper and who wishes to claim damages must institute his action within the three months following the publication of such article, or within three months after his having had knowledge of such publication, provided, in the latter case, that the action be instituted within one year from the publication of the article complained of."

Article 8 states:

"Whenever the party who deems himself injured has both obtained a retraction and exercised the right to reply, no prosecution may issue

if the newspaper publishes such retraction
and reply without further comment."

The exemption of the newspaper from any possible damage suit is thus made contingent upon its publishing both a reply by the injured party and its own retraction without further comment on what may be an important issue. The constitutionality of this act has never been questioned.

4. Civil Rights Under The Civil Code of The Province of Quebec

(i) Public order and good morals

Article 13 of the Civil Code states:

"No one can by private agreement, validly contravene the laws of public order and good morals."

Quebec judges have been traditionally cautious, but this article could nevertheless serve as a positive law base for declaring infringements of individual civil liberties to be against public order and good morals. Such a position has been justified by the Quebec jurist, Antonio Perrault:

On peut conclure que le législateur québécois prit partie dans l'élaboration de notre droit

privé et qu'il affirma sa croyance à la transendance du Droit, à la notion d'une loi positive conforme à l'ordre divin, à l'existence d'une loi morale et juridique supérieure à l'individu et même à la collectivité. Le Code Civil québécois ne s'appuie pas exclusivement sur une base individualiste, mais aussi sur cette idée que le droit, science sociale, a pour fin unique l'équilibre entre les citoyens, la paix au sein de la société. Le législateur ne pouvant prévoir d'avance toutes les circonstances où devront être protégés les intérêts fondamentaux de la nation, accorde au juge l'autorité de s'appuyer, pour suppléer aux lacunes de la loi, arrêter l'égoïsme trop souvent injuste des individus, sur l'ordre publique et les principes indispensables à la morale chrétienne."³⁰

(ii) Abuse of Rights

The doctrine of abuse of rights, first elaborated by the French jurist, Josserand, at the beginning of the present century, has gained some following in France, but its existence in the Province of Quebec is hotly disputed. According to this doctrine the exercise of a right may be sanctioned if the court deems it to have been motivated solely by malice or a desire to harm others. There are a few rare judicial dicta declaring the doctrine of the abuse of rights to exist in Quebec law, however,

it has never been invoked as the sole justification of a decision and it would seem true to say that, in Quebec, the widely used term "abuse of rights" simply denotes an act which in itself causes unjust suffering to others, constituting in effect a nuisance in common law terms.

In the case of Drysdale v. Dugas³¹ it was stated that article 1053 of the Civil Code:

"includes all abuses of proprietary rights, even the most absolute, for such rights must, according to the general principles of all systems of law, be subject to certain restrictions subordinating the exercise of acts of ownership to the rights of neighbouring proprietors; sic utere tuo ut alienum non laedas is as much a rule of the French law of the Province of Quebec as to the common law of England."³²

(iii) The general principle of liability in Delict:

Article 1053 C.C.

Article 1053 C.C. reads as follows:

"Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill."

This article provides a general recourse in damages for any harm caused by a person, either by his wilful act, or by his neglect.

The ambit of this article is by no means restricted to material or pecuniary harm, nor is it restricted to certain predefined and generally recognised wrongs. The action in damages granted under article 1053 is of the most general nature. In Civil Law terms, it extends not only to harm done to a patrimony, but also to any infringement of extra-patrimonial rights. Thus, it is equally possible to demand "moral damages" for any affront to one's personal dignity, either arising from an affront to one's reputation or from illegal detention of one's person. It can be seen that this principle extends with equal felicity to all attaints to generally recognised civil liberties. The strongest possible judicial dicta exist to this effect. In the case of Duhaime v. Talbot³³ the Quebec Court of Appeal made it clear that while "punitive damages" do not exist under the Civil Law of Quebec moral damages most certainly do. The Honourable Mr. Justice Rivard stated:

"Endroit civil, le préjudice causé par un délit ou un quasi-délit ne peut donner lieu à une condamnation devant servir uniquement de punition ou d'exemple; c'est là plutôt le domaine du droit pénal. Sous l'empire de l'article 1053 du Code civil, les dommages-intérêts qui peuvent être accordés à la victime d'un délit s'étendent de la compensation pour le tort subi; c'est la réparation pécuniaire d'un préjudice. Ce préjudice peut être matériel; les conséquences

pécuniaires en sont aisément appréciées et doivent faire l'objet d'une preuve spécifique. Il peut aussi être moral: atteinte à l'honneur, à la réputation, chagrins, inquiétudes, etc...."³⁴

The use of this technique under the Civil Law has been particularly evident in cases involving defamation of character and unjustified imprisonment. In the case of Chaloult v. Chronicle Telegraph Publishing Co. Ltd.³⁵ damages were awarded to René Chaloult, an anti-conscription agitator, against the Chronicle Telegraph Publishing Company which had published a bitter attack upon his character and political activities. The Court held that the comments of the newspaper went beyond all bounds of "comment" and constituted "un fait qui porte atteinte à l'honneur ou à la considération de la personne ou du corps"³⁶ and the Court held that in such a question the plaintiff did not have to prove specific pecuniary damages. The right to moral damages for defamation may be invoked by other members of a family who feel themselves equally defamed.³⁷

An example of damages being awarded for humiliation and false imprisonment is that of D. v. City of Montreal.³⁸ In this case, a young and respectable girl, was arrested by the police on suspicion of prostitution, and despite protests, was submitted to medical tests in the police station and kept there all night without permission to contact her parents. She was awarded damages not only for loss of earnings and medical expenses, but "for her physical, mental and moral pain and suffering and for great injury to her reputation, character and humiliation."³⁹

Again, in the case of Londell vs. Macy,⁴⁰ two young girls working as Jehovah's Witness missionaries in Joliette were awarded damages against the virtual vigilante group of good citizens who kidnapped them on the street and sent them prisoners by taxi to Montreal to be rid of them. In awarding damages the court referred to "le droit de chaque individu à la liberté de la personne"⁴¹ which the defendants had flagrantly violated.⁴²

A "leading case" demonstrating the efficacy of recourse to article 1053 C.C. as a remedy for abuse of civil liberties, is the Supreme Court decision in Lamb v. Benoit et al.⁴³ In this case, involving the false imprisonment of Lamb, the police officers sought to argue that they had acted according to orders. Rejecting this argument the Supreme Court held that they must be deemed to have acted without good faith, and it followed necessarily that they had committed a delict actionable under article 1053 of the Civil Code.⁴⁴

The most important statement of the applicability of article 1053 C.C. to any infringement of civil rights is to be found in the Supreme Court decision of Chaput v. Romain et al.⁴⁵ Here, the Court ruled that the policemen who had illegally entered a Jehovah's Witness meeting, and seized tracts, books and pamphlets which they did not return, could not be deemed to have acted in good faith and were therefore liable to damages under article 1053 C.C. To this effect Justice Taschereau gave the following important definition of the extent of these damages:

"En vertu de 1053 C.C. l'obligation de réparer découle de deux éléments essentiels: un fait dommageable subi par la victime, et al faute de l'auteur du délit ou du quasi-délit. Même si aucun dommage pécuniaire n'est prouvé, il existe quand même, non pas un droit à des dommages punitifs ou exemplaires, que la loi de Québec ne connaît pas, mais certainement un droit à des dommages moraux. La loi civile ne punit jamais l'auteur d'un delit ou d'un quasi-délit; elle accorde une compensation à la victime pour le tort qui lui a été causé. La punition est exclusivement du ressort des tribunaux correctionnels. Le dommage moral, comme tout dommages-intérêts accordés par un tribunal, a exclusivement un caractère compensatoire.

Il comprend certainement le préjudice souffert dans la présente cause. Il s'entend en effet de toute atteinte aux droits extrapatrimoniaux, comme le droit à la liberté, à l'honneur, au nom, à la liberté de conscience ou de parole. Les tribunaux ne peuvent refuser de l'accorder, comme par exemple, si les sentiments religieux ou patriotiques ont été blessés." 45a

(iv) The Right of Privacy

The leading case in this field is that of Robbins v. The Canadian Broadcasting Corporation.⁴⁶ In this case,

producers of the programme Tabloid read publicly an angry letter which they had received from a prominent physician, and invited the public to call him and "cheer him up". The court ruled in favour of Dr. Robbins awarding him \$3000 damages on the ground that

"defendant and its employees knew or ought to have known, that the said television broadcast and request would have been a damaging invasion of the plaintiff's privacy, and would be seen and heard by many thousands of people in Eastern Canada and the United States, and that a large number of them would respond to the said request and subject the plaintiff to abuse and insults and prejudice and humiliation, and would cause loss and damage to the plaintiff;"⁴⁷

The second reported case in this field is that of Cooperburg v. Buckman,⁴⁸ in which the plaintiff claimed damages on the ground that the defendant had badgered and annoyed him by telephone calls, at his place of employment and late at night at his residence, in order to collect an outstanding debt of \$58. The court ruled in his favour, stating that while the Civil Law of Quebec does not recognise punitive damages against the defendant in a civil case

"Moral damages are recognised with the violation of a right such as the peaceful enjoyment of one's home without unjust disturbance."⁴⁹

(v.) Trespass

The English doctrine of trespass does not prevail under

the Civil Law of Quebec, and, according to the appeal court decision of Cadorette v. Paris,⁵⁰ damages, even for constant incursion on to one's property, will only be awarded if the plaintiff can prove damages therefrom. The majority of the judges of the Court of Appeal would have been willing, however, to award moral damages had they been sought by the plaintiff. It is likely that the following statement of the law by two dissenting judges would find favour with many members of the bench:

"La violation voulue de la propriété n'est pas seulement une provocation injuste à l'encountre du propriétaire, mais elle est, à mon sens, une injure donnant droit à des recours en justice en civile, une réclamation en dommages-intérêts, même si cette dernière n'a pour fin principale que de faire reconnaître le principe du droit inviolable à la propriété."⁵¹

(vi) Access to Public Places

The cases in this area are undoubtedly the most important, and the most frequently cited, of all the decisions relating to Civil Liberties under the law of Quebec. They turn on what is probably the most complete and dogmatic exposition of the doctrine of freedom of contract, setting the tone for the whole Civil Law of Quebec with respect to individual Civil Liberties. In effect they accorded primacy to freedom of contract over countervailing libertarian interests.

The first case in this area is surprisingly liberal,

although it was argued in terms of freedom of contract, and was thus not necessarily overruled by the subsequent cases. In the case of Sparrow v. Johnson⁵², the Court of Queen's Bench ruled that once the theatre had sold tickets to a customer accompanied by a coloured woman, it could not subsequently require the couple to sit in other seats than those for which they had bought tickets. But if the result of this decision was liberal, the court at no point condemned the racial discrimination involved in requiring negroes to sit in certain parts of the audience only, and the ratio of this case turns solely upon the fact that the theatre did not have the right to change the terms of the contract and require the couple to sit in other seats after having sold the tickets.

In the case of Loew's Montreal Theatre Limited v. Reynolds⁵³ the Court of Appeal ruled that a coloured man had no right under the law to protest a rule of the theatre requiring negroes to be seated in a certain part of the hall only. In this case, unlike that of Sparrow, Reynolds had purchased a general ticket of admission, and not tickets for a particular seat. In reversing the decision of the Superior Court in favour of plaintiff, the Court of Queen's Bench ruled:

"While it may be unlawful to exclude persons of colour from the equal enjoyment of all rights and privileges in all places of public amusements, the management has the right to assign particular seats for different races and classes of men and women as it sees fit, but unless there is a

regulation of a theatre assigning particular seats for white people and for coloured people, the management would have no right to reject coloured people who have purchased tickets of general admission."⁵⁴

Despite the liberalism of this final proviso the Court of Appeal held that freedom of contract must have precedence over any condemnation of racial discrimination.

The case of Christie v. the York Corporation⁵⁵ was, until 1963, the leading case in the whole field of Civil Liberties under the private law of Quebec. Although the particular act of discrimination in the Christie case has now been prohibited by statute, it is still too early to say that the whole case has lost its significance. Christie, a negro who had frequently been there before was refused service, first by a waiter, and then by the manager of the tavern and rejected by the police at their request. The Superior Court maintained his action in damages, but the Court of Queen's Bench and the Supreme Court reversed this judgment. The basis for this decision was the primacy freedom of contract. The Court of Queen's Bench in the Christie case ruled as follows:

"Considering that as a general rule, in the absence of any specific law, a merchant or trader is free to carry on his business in the manner that he conceives to be best for that business."⁵⁶

Two of the five judges of the Court of Appeal dissented, on the

ground that holders of public licences must be deemed to have public duties; yet neither of these judges was able to find a cause for damages under article 1053. The majority of the Court of Appeal refused to hold that an act of racial discrimination could constitute grounds for an action in damages, and in particular, they reasoned that the Hotels Act, which required restaurateurs and hotel keepers to serve all travellers, must be interpreted restrictively as a derogation to the general principle of freedom of contract.

The decision of the Supreme Court, to which only one judge (not a Quebec judge) dissented was even more explicit: Mr. Justice Rinfret held that:

"We ought to start from the proposition that the general principle of the law of Quebec is that of complete freedom of commerce. Any merchant is free to deal as he may choose with any individual member of the public. It is not a question of motives or reasons for deciding to deal or not to deal; he is free to do either. The only restriction to this general principle would be the existence of the specific law, or, in the carrying out of the principle the adoption of the rule contrary to good morals of public order."⁵⁷

Mr. Justice Rinfret further held that:

"It cannot be argued that the rule adopted by the respondent in the conduct of its establishment was contrary to good morals or public order."⁵⁸

Thus, in the Christie case, we have strong authority for the proposition that an act of racial discrimination is not a breach of contract, is not a delict under Article 1053, and is not against public order and good morals.

(vii) Group Defamation

The general rule under the Civil Law of Quebec is that to bring an action in defamation under Article 1053, the plaintiff must be able to prove that the statements of which he complains designate him with sufficient clarity. This principle would seem to exclude the possibility of any group of persons taking an action in defamation. This is virtually the case in Quebec. However, it would seem that in some cases a number of persons who may claim to have been defamed together may take a common action. Thus, it is possible for any member of a family which has been defamed as a group to take an action in damages.⁵⁹ Advancing further, while it has been held that members of an association cannot join together individually to sue in the common name of the association⁶⁰ it was held in the case of Ibbotson v. l'Autorité⁶¹ that the members of the Board of Governors of the College of Surgeon-Dentists could take an action against a newspaper which had published a libellous and defamatory article attainting their professional honour.

In the case of Germain v. Ryan⁶² it was held that a vicious and general attack by an Irishman upon all French-Canadians was too general to give any one of the unfortunate victims a cause of personal prejudice. However, in the case of Ortenberg v. Plamondon⁶³ the libel of 75 Jewish families

was held to be actionable. The Court of Appeal stated:

"Ce n'est pas le cas d'une injure adressée à une collectivité aussi nombreuse pour qu'elle se perde dans le nombre."⁶⁴

(viii) Defamation and Freedom of the Press

Under the private law of Quebec, the Press enjoys no special privilege and is responsible in cases of injurious statements as is any person. The only articles which are absolutely privileged are accurate reports of statements in Parliament, and the Provincial Legislatures, and fair and honest reportings of court proceedings. The ordinary rules concerning libel apply to newspaper statements; thus there is liability if the offending party cannot prove that the publication was made in the public interest, concerning a matter of public importance and was true or was reasonably and with probable basis believed to be true. It was held in the case of L'Imprimerie Populaire v. Taschereau⁶⁵ that liability was not avoided because the libel was printed in good faith and without malice. However, good faith may be pleaded in mitigation of the damages, as may the truth of the statements published and the notoriety of the facts printed.

Most cases of defamation in newspapers or periodicals are now dealt with under the Quebec Press Act⁶⁶ which requires every person who deems himself injured by an article published in a newspaper, and who wishes to claim damages, to institute his action within three months following publication and give three days notice at the office of the newspaper so as to allow

the newspaper to rectify or retract the offending article. The newspaper must comply with the provisions of the statute to the letter in order to benefit from the provisions of the statute.⁶⁷

(ix) Discrimination in Housing

There does not appear to be any Quebec jurisprudence (case law) on the subject of racial discrimination in housing, prior to 1965. In the light of this absence of case law, and in the light of the doctrines of Christie v. York Corporation, decided by the Supreme Court of Canada in 1939, (*supra*), it would seem that until recently the doctrine of freedom of contract and freedom of commerce prevailed in this field. However, in October 1965 a most unusual decision was rendered by Mr. Justice Nadeau of the Superior Court in the case of Gooding v. Edlow Investment Corporation.⁶⁸ The plaintiff, a coloured woman sought, through her agent, to rent an apartment on Girouard Avenue. First her agent, and then she, accompanied by her agent, spoke with the superintendent of the apartment block. The latter agreed to rent an apartment and phoned the office of the rental company who also agreed to rent and requested the plaintiff to come over to their office to sign the lease. Under Quebec law such an agreement to sign a lease is tantamount to a lease - a valid "pre-contrat". On arrival at the defendant company's offices the plaintiff spoke with the company's agent Beck for a moment. Beck then left the room only to return some minutes later to say that the apartment was not available and allegedly giving as a reason that he could not rent to a negress. The evidence as to this statement was contradicted by Beck, but Mr. Justice Nadeau preferred the plaintiff's version

of the statement. Mr. Justice Nadeau ruled that a valid lease had been concluded between the parties and had been unreasonably breached by defendant company. The company was therefore condemned to pay contractual damages representing (a) the deposit on the verbal lease which the plaintiff had made, (b) the sums of money which the plaintiff had had to spend reconditioning the inferior apartment which she ultimately rented, (c) the commission of plaintiff's agent in his subsequent search for an apartment and (d) the damages represented by having to rent an apartment in an inferior location to that of the one which she might have had from the Edlow Corporation.

The plaintiff claimed that, upon the refusal of the defendant corporation to rent the apartment to her for reasons of racial discrimination, she suffered such severe moral humiliation that she not only fainted upon the spot but was ill and upset for several weeks after, and was forced to miss several days of work. Mr. Justice Nadeau completely concurred in the justice of these claims and stated specifically that damages must also be awarded to plaintiff under article 1053 of the Civil Code as well as under contract. He concluded his decision in the following terms:

"VU les articles 13 et 1053 c. civ.;
CONSIDERANT qu'en plus du fait pour la défenderesse d'avoir résilié le contrat de location pour un motif aussi manifestement illégal, elle a par l'entremise de son gérant, agissant dans l'exécution de ses fonctions, insulté et injurié

la demanderesse, en exprimant ce motif de réconciliation publiquement devant elle et M. George Papadakis;

CONSIDERANT que toute discrimination raciale est illégale parde que contraire à l'ordre public et aux bonnes moeurs;

CONSIDERANT que le geste discriminatoire posé par la défenderesse constitue une violation des règles couramment admises de la morale, applicables à la vie en société; qu'il est aussi de la catégorie des actes attentatoires à l'ordre public, étant de nature à troubler la paix dans la société;

CONSIDERANT qu'un tel acte de discrimination posé dans les circonstances exposées plus haut constitue une faute civile délictuelle, dont la défenderesse doit répondre;

CONSIDERANT que pour cet acte de discrimination dont elle a été victime, la demanderesse, humiliée et atteinte dans sa sensibilité, a droit d'obtenir, en réparation de ce préjudice moral, une somme d'argent que le Tribunal fixe à \$300.00;

CONSIDERANT qu'au double titre de l'inexécution par la défenderesse de son contrat et de la faute dont elle s'est rendue coupable, il y a lieu d'accorder à la demanderesse la somme totale de \$525.45;

PAR CES MOTIFS, LE TRIBUNAL:

ACCUEILLE en partie l'action de la demanderesse;

DECLARE résilié et annulé le bail intervenu entre la demanderesse et la défenderesse, le ou vers le 26 avril 1960, pour l'appartement No. 8 au 2290 de l'avenue Girouard, à Montréal;

CONDAMNE la défenderesse à payer à la demanderesse la somme de \$525.45 avec intérêts à compter de la signification de l'action et les dépens."⁶⁹

This case is clearly in flagrant contradiction with the doctrines of contract proclaimed in the Christie case by the Supreme Court. It provides a remarkable example of the efficacy of the remedy which exists under the civil law to protect persons against infringements in their basic civil liberties.

(x) Racial Discrimination in Trades Unions

There seems to be only one reported case in this field,⁷⁰ John Murdock Limitée v. La Commission des relations ouvrières de Québec et La Fraternité unie des charpentiers-menuisiers d'Amérique.⁷¹ In this case, the Woodworkers Union organized what they purported to be a majority of the employees of the John Murdock company, but which was in fact only a majority of the non-Indian workers, the latter workers not having been considered at all. The company sought a writ of certiorari attacking the validity of the Union certification. The Superior

Court granted the writ, rejecting the union argument in defense that Indians were wards of the state and protected by special laws and thus subject to the ordinary labour legislation of the Province. The Honourable Mr. Justice Boulanger stated further:

"Cette tentative de ségrégation raciale ne peut être appuyée sur aucun texte de loi. C'est une atteinte à la liberté de travail et aux droits de tout salarié de faire partie ou non d'une association et de bénéficier de législation ouvrière."⁷²

The Judge stated that it was not open to the Labour Relations Board to refuse to consider Indians any more than it would be open to them to exclude from account of the majority of workers in a given group Protestants, Czechoslovaks or adherents to the doctrines of social credit.⁷³

(xi) Discrimination in Employment

Two important prosecutions have been brought under the 1964 Employment Discrimination Act.⁷⁴ Both cases are still pending before the courts. The first case, the Queen v. Hilton of Canada (Balyss),⁷⁵ involved a negro nurse who claimed that she was refused employment at the Queen Elizabeth Hotel because of her race. Before judgment could be rendered by the Court of Sessions in 1965 the Hotel took a writ of prohibition arguing that the Quebec statute was ultra vires the Province. The decision will be rendered by the Superior Court some time in 1967.⁷⁶ The second case, The Queen v. Lafferty and Harwood Ltd.⁷⁷

is a claim by two Jews that they have been refused employment in the office of a prominent investment brokerage firm because of their race. Proceedings before the Court of Sessions of the Peace have been stayed until a decision by the Superior Court on the constitutional issue can be rendered.⁷⁸ The decision of the Superior Court on the constitutional issue in the Balyss case⁷⁹ may have far-reaching implications for the definition of the limits of provincial powers in the areas of civil rights.

(xii) Discriminatory Clauses in Contracts

There is very little jurisprudence in this area, -- in part, perhaps, because such cases have not been reported, but more likely due to predominance of the doctrine of freedom of contract. In the opinion of Professor Comptois,⁸⁰ discriminatory clauses in contracts, such as the clause in the deed of sale prohibiting further sale to "persons of Jewish race" must be upheld under the existing private law of Quebec: the only hope which he holds out is that Quebec courts, (as in the Ontario decision, Re Noble and Wolfe,⁸¹) might rule that such a clause was too vague to be applied.

There is an unreported decision concerning discriminatory clauses in contracts, given by Mr. Justice Nadeau, -- John Whitfield vs. Canadian Marconi Company.⁸² In this case the plaintiff Whitfield was an electrician working on a Government contract in Northern Quebec. One of the clauses of his contract with the Canadian Marconi Company read as follows:

"Indian and Eskimo villages are considered

out of bounds and personnel are prohibited from fraternization or association with the native population except in special circumstances. Infringement of these orders is cause for a discharge."

Whitfield became enamoured of a young Eskimo nurse and, in order to visit her, naturally violated the terms of his contract. On being questioned by his superiors Whitfield argued that the young lady in question could not be regarded as a primitive Eskimo in need of protection against white men, since she had lived for several years in Montreal, studying to be a nurse, and had worked for two years with Air Canada as an airline hostess. The company involved, and the Department of Northern Affairs, however, considered that the principle of protection of Eskimos from contact with the construction workers in the Dew Line sites was sufficiently important to necessitate its application even in the most doubtful case.

Mr. Justice Nadeau, in his decision in the case, ruled that Whitfield's discharge was both in conformity with his contract and that the contract was in no way a violation of public order and good morals, since the purpose of this contract was to protect Eskimos, not to discriminate against them. The decision has been appealed to the Court of Queen's Bench.⁸³ The principle announced by Mr. Justice Nadeau still appears clear, and he does not appear to have gone back upon his earlier ruling in the Gooding vs. Edlow case. What Mr. Justice Nadeau found was that this clause was not discriminatory and hence not against

public order and good morals. Had he concluded the clause to be discriminatory it may be presumed that he would have gone on to rule it to be invalid.⁸⁴

(xiii) Testamentary Freedom

There have been a number of cases in the Province of Quebec in which clauses in wills were attacked as invalid since they contravened freedom of religion. Freedom of religion is recognized as much under the private law of Quebec as under public law, thus in the case of Chaput v. Romain⁸⁵ Mr. Justice Taschereau stated:

"Il n'existe pas de religion d'état; toute atteinte à cette liberté constitue un pré-judice moral pour lequel les tribunaux accordant réparation."⁸⁶

The great Quebec doctrinal writer, Mignault, states in his Traité de Droit Civil Canadien:

"Toute atteinte à la liberté de religion est contre l'ordre public et les bonnes moeurs."⁸⁷

The leading case in this area is that of Renaud v. Lamothe.⁸⁸ In this case a father left money to all his children with a substitution in favour of their children, on the condition that only his grandchildren who had been brought up and educated according to the rites of the Catholic Church should be eligible under the substitution. The Superior Court declared this clause

to be an attaint to freedom of religion and therefore against public order and good morals. The Court of Appeal reversed this decision in the following terms:

"I only add a word to draw a distinction which I make in the application of this will to marriages contracted before or after the death of the testator. In the latter case the provisions of the will would have been open to objections made by the learned judge who rendered the judgment appealed from. In that case the testator's unmarried children would have had a pecuniary interest in conforming to the cause of the will which disinherited a child who contracted the marriage with anybody but a Catholic. This would have been a restraint of personal freedom of choice in marriage, and, therefore contrary to public morals, and prohibition of the will quoad such child or the issue of such a marriage would, in my opinion, have been inoperative for the reason given in the judgment."⁸⁹

Thus the Court of Queen's Bench ruled that the clause was valid since at the time of making the will and at the time of the testator's death his children were married and his grandchildren were all alive. Had this not been the case, however, such a clause would well have been against public order and good moral.

The Supreme Court confirmed this decision but since its ruling is based solely upon construction of the English rules in this matter it is of little interest or authority. In the case of Thornton v. Parker⁹⁰ the heirs attacked the clause which declared (a) that all the children of the de cuius who are members of the Baptist Church would be excluded from the succession and (b) all those who abjured the beliefs of this sect would become eligible to participate in the succession. The court declared that clause (b) was clearly an attaint to freedom of religion, and hence illegal, but unfortunately, the court considered that it was impossible to divide the two clauses, and rather than declare the will to be of no effect whatsoever, it held the first clause valid under the rule laid down in Renaud v. Lamothe.

In an earlier case, Kimpton v. La Compagnie de Chemin de Fer du Pacifique Canadien⁹¹ a substitution in favour of all grandchildren who might become protestants was declared to be null and against public order and good morals.

Professor André Morel in his study Les limites de la liberté testamentaire⁹² declares:

"Le legs qui est subordonné à la condition
de se faire prêtre ou, au contraire, de
renoncer à cet état enfreint donc l'ordre
public à un double titre."⁹³

Thus, in the area of testamentary freedom, it would seem that the courts are willing to exercise their power of declaring a clause null as violating public order and good morals, if they

deem it to be an infringement of freedom of religion. Professor Morel writes in his study⁹⁴ that the one area of testamentary freedom in which the courts seem unwilling to interfere on any grounds, are those clauses in a will affecting a wife's rights under a succession should she remarry, or should her circumstances or her way of life alter considerably.

(xiv) Freedom of Religion Under the Quebec School System

In the Province of Quebec the B.N.A. Act institutes a system under which Protestants cannot be Catholics but, paradoxically, all Non-Catholics are de facto considered as Protestants.⁹⁵ However, in country districts, children of all religions have a right to attend the local school, if the school of their Protestant or Catholic denomination does not exist separately.

Under the Quebec Education system, there is a special rule which obliges all persons who wish to teach either in the Protestant or in the Catholic systems to obtain from their priest or minister a certificate declaring them to be in good standing with their respective churches. The legal duty of Protestant School Boards to hire Jewish, or other non-Christian, teachers is a matter of some doubt, although considerable numbers have been employed in recent years. It would seem that, in Montreal and Quebec where there are only the two boards, Protestant and Catholic, and not a common school board as in country districts, there is no legal obligation whatsoever on the part of the government to name non-Protestants and non-Catholics to the school

boards. However, during the last two years there has been some amelioration of this rule, and Jewish members of the Protestant Board were named for the first time.

Outside Montreal and Quebec, the legal situation of schools is somewhat different, in the sense that two boards, Protestant and Catholic, are not legally imposed; rather the first board to be established is the Common School Board and the second is the board established by the dissenting Catholic or Protestant minority. In practice, of course, outside Montreal, Quebec and certain regions of the Eastern Townships, virtually all the common schools serve preponderantly French-speaking Roman Catholic majorities and the teachers have been, in large numbers, members of religious orders. In the case of Perron v. Les syndics d'écoles de Rouyn⁹⁶ the court of Queen's Bench ruled that a Witness of Jehovah who had abjured his Catholic faith remained a Christian, and therefore could by right enter his children into the Protestant dissenting school of the municipality. Mr. Justice Bissonnette ruled that:

"Pour être considéré comme protestant, il suffit d'être chrétien et de répudier l'autorité du Pape."⁹⁷

Had the court not so ruled, Perron's children would have only been eligible to enter the Common School of the municipality, which was de facto, though not de jure, Catholic. In the case of Chabot v. Les commissaires d'école de la Morandière⁹⁸ Chabot, a Witness of Jehovah, living in an area where there was only a

Common School, and no dissenting Protestant school, sought to remove his children from the religious instruction classes, which were, by necessity, Catholic. The school authorities had required the children either to remain for all classes or to leave, altogether. The decision of the Court of Appeal is posited not simply on freedom of religion, but even on concepts of natural law. Thus Justice Pratte ruled:

"Aussi donc si l'on tient aux droits naturels, le premier de tous les droits, il faut conclure que les enfants qui fréquentent une école ne doivent pas être tenus de suivre un enseignement auquel leur père s'oppose.:⁹⁹

Mr. Justice Casey ruled:

"What concerns us now is the denial of plaintiff's right of inviolability of conscience, a denial that is coupled with or effected by - and in either case the result is the same - active interference with his right to control the religious education of his children; and at this point I recall what is discussed at length by Mr. Justice Pratte, supra: plaintiff is obliged to send his children to a school and he is entitled to send them to the particular one involved in this case.
It is well to remember that the rights of which we have been speaking find their source in

natural law, those rules of action that evoke the notion of justice which human authority expresses or ought to express but does not make; a justice which human authority may fail to express, and must pay the penalty for failing to express by the diminution, or even a forfeiture of its power to command."¹⁰⁰

The whole problem of freedom of religion in schools is so dominated by the constitutional questions having their root in the B.N.A. Act that one cannot invoke the doctrine of freedom of religion in these school cases. However, the courts have made an attempt to protect religious freedoms of Protestants or Catholics in Common Schools. On the other hand, there is little corresponding judicial deference to interests in religion in the decisions relating to non-Catholic or non-Protestant religious groups. In the case of Pinsler v. The Protestant Board of School Commissioners of Montreal¹⁰¹ the Superior Court ruled that Jewish children entered Protestant schools by grace, not by right, and were therefore lawfully excluded from consideration for scholarships if the board so wished. The case of Hirsh v. The Protestant School Commissioners of Montreal, which ultimately reached Privy Council,¹⁰² is an example of application of an abstract, mechanical jurisprudence of concepts to a claim involving interests in religion. Despite the attempt of the Privy Council and the Supreme Court, in this decision, to define the school rights of Jews in the Province of Quebec, these rights have remained vague and rather confused.

Footnotes

- 1 1940 S.C.R. 139.
- 2 See Appendix "A".
- 3 See Appendix "B".
- 4 Le Devoir 3 May, 1966, p. 1.
- 5 p. 7.
- 6 The Montreal Star, 4th February, 1966, p. 4.
- 7 See La Tribune de Sherbrooke, p. 19, The Montreal Gazette, the Montreal Star, on 21st March, 1966.
- 8 9th August, 1966, p. 1.
- 9 9th August, 1966.
- 10 La Presse, 9th August, 1966, p. 1; Montreal Matin, 9th August, 1966, p. 2, and Le Journal de Montreal.
- 11 Montreal Matin, September 27.
- 12 For text see Appendix "E". And see also the discussion Le Devoir, September 30, p. 1, also October 3; La Presse, September 30; The Gazette, September 30; The Montreal Star, September 30; Montreal Matin, September 30, 1966.
- 13 1959, 37 Can. B. Rev. p. 135.
- 14 1962, 65 Revue de Notariat, p. 167.
- 15 1957 La Themis, p. 193.
- 16 1957, 59 Revue du Notariat, p. 321.
- 17 1963, 65 Revue du Notariat, p. 431.
- 18 (1957-58) 8 La Themis 88, Hurtubise et Cloutier.
- 19 Paris, 1960.
- 20 F.R. Scott, op.cit., p. 136
- 21 Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.

- 22 Scott, op.cit., p. 137
- 23 1959, S.C.R. 121.
- 24 Scott, op.cit., p. 144
- 25 S.Q. 12 Elizabeth II, 1963, C. 40; R.S.Q. 1964, c. 205,
See Appendix "A".
- 26 R.S.Q. 1941, c. 76.
- 27 S.Q. 13, Elizabeth II, 1964, c. 46; R.S.Q. 1964, c. 142,
See Appendix "B".
- 28 R.S.Q. 1964, c. 301. See Appendix "C".
- 29 R.S.Q. 1964, c. 48. See Appendix "D".
- 30 1949 Revue du Barreau de la Province de Quebec, 15 & 16.
- 31 1896, 26 S.C.R. 20.
- 32 Ibid p. 23.
- 33 1938, 64 C.B.R. 386.
- 34 1938, 64 C.B.R. 386 at p. 391.
- 35 1944, R.L. p. 1.
- 36 Ibid p. 5.
- 37 See the case of Raymond v. Abel (1946) S.C. 251, and
Plamondon v. Carreau (1938) 76 S.C. 120
- 38 1947, R.L. 257.
- 39 Ibid p. 266.
- 40 1954, C.S. 57.
- 41 Ibid p. 63.
- 42 See also Dame Strasberg v. Lavergne, 1956 B.R. 189.
- 43 1959, S.C.R. 321.
- 44 See the judgement of Judge Taschereau, Ibid p. 335.
- 45 1955, S.C.R. 834.
- 45a Ibid., p. 841.
- 46 1958, C.S. 152.
- 47 p. 154.

- 48 1958, C.S. 427.
- 49 Ibid. p. 429
- 50 1950 B.R., 125.
- 51 Ibid p. 132
- 52 1898, 8 C.B.R. 379.
- 53 1921, 30 C.B.R. 459.
- 54 Ibid p. 465.
- 55 1938, 65 C.B.R. 104; & 1939 S.C.R. 139.
- 56 1938, 65 C.B.R. 105
- 57 1939, S.C.R. 143
- 58 Ibid p. 144.
- 59 See Raymond v. Abel, 1956 S.C. 251 and Plamondon v. Carreau, 1938, 76 S.C. 120.
- 60 Perrault v. Poirier, 1959 B.R. 447.
- 61 1919 25 R.J. 322.
- 62 1918, 53 S.C. 543.
- 63 1914, 24 C.B.R. 69.
- 64 Ibid. p. 75.
For a treatment in the problem of group defamation both under the law of Quebec and Federal Law, see Mortimer G. Freiheit, Free Speech and Defamation of Groups, 1965 Themis, p. 129.
- 65 34 K.B. 554.
- 66 R.S.Q. 1964, C. 48.
- 67 See Shallow v. The Gazette, 17 K.B. 309 and Maynard v. Marcheau 53 K.B. 476.
- 68 S.C. No. 513.958; 1966 S.C. 436.
- 69 1966 S.C. 436, et 442.
- 70 This may well be due to the fact that few cases in this field come before the Courts and if they do are not reported.

- 71 1956, C.S. 30.
- 72 Ibid. p. 36.
- 73 p. 35.
- 74 R.S.Q. 1964, c. 142.
- 75 Court of Sessions of the Peace 1965 No. 27-167 District of Montréal.
- 76 S.C. No. 700.101. District of Montreal.
- 77 Ct. of Sessions of the Peace, Nos. 11.881, 1966; 12.797, 1966; 12.798, 1966. District of Montréal.
- 78 A civil action is apparently to be brought later.
- 79 It will almost certainly be carried to appeal from the Superior Court.
- 80 Comptois, op.cit., supra.
- 81 1951, S.C.R. 64.
- 82 Superior Court District of Montreal No. 561.864; Nov. 1965.
- 83 A decision may be expected in early 1967.
- 84 See Roger Comptios, La Prohibition d'aliéner dans les actes à titre onéreux La Clause Raciale, 1957, 59 Revue du Notariat p. 321.
- 85 1955, S.C.R. p. 834.
- 86 Ibid. p. 840.
- 87 Vol. 4, p. 14.
- 88 1906, 15 B.R. 400, Judgement delivered in 1900 - 1902
32 S.C.R. 357.
- 89 Hall J., (1906) 15 B.R. 405.
- 90 1918, 54 C.S.
- 91 1888, M.L.R., 4. C.S. 338.
- 92 Paris, Pichon, 1960.
- 93 Op.cit. p. 135.
- 94 Op.cit. p. 139.

- 95 See the Education Act R.S.Q. 1964, C.235, inter alia, s. 1(25)
- 96 1955, B.R. 841.
- 97 Ibid., p. 846.
- 98 1957, B.R. 707.
- 99 Ibid., p. 717.
- 100 Ibid., P. 721.
- 101 1903, 23 C.S. 375.
- 102 1928, A.C. 200.

APPENDIX "A"

Nom: R.S.Q. 1964 c. 205

First Session, Twenty-Seventh Legislature, 12 Elizabeth II, 1963

Legislative Assembly of Quebec

BILL 7

Hotels Act

As Passed By The Legislative Assembly, June 26th, 1963

Roch Lefebvre

Queen's Printer

Explanatory Note

This bill proposes a revision of the legislation respecting hotels, restaurants and lodging-houses. Camping grounds are also made subject to its provisions.

Bill 7

Hotels Act

Her Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. In this act, the following expressions mean:
 - a. "hotel": an establishment, other than a lodging-house, provided with special accommodation so that, for payment, lodging is habitually available there for travellers;
 - b. "restaurant": an establishment provided with special accommodation so that, for payment, food but not lodging is habitually available there for travellers;
 - c. "lodging-house": an establishment provided with special accommodation so that, for payment by the week, lodging is habitually available there for travellers;
 - d. "traveller": a person who, in consideration of a given price per week, per day or per meal, is furnished by another person with food or lodging or both;
 - e. "camping ground": land specially arranged so that travellers may be permitted, for payment, to camp there;

- f. "minister": the Minister of Tourism, Fish and Game;
 - g. "regulations": the regulations made under this act.
2. It is forbidden to operate a hotel, a camping ground, a restaurant or a lodging-house without having previously obtained a permit for that purpose.
3. The permit shall expire on the 30th of April following the day of its issue unless an earlier date is fixed for its expiration. It shall be renewable.
4. Application for a permit must be made to the minister in writing stating:
- a. the applicant's full name and address;
 - b. whether he is owner or lessee and, in the latter case, the full name and address of the owner;
 - c. the name and address of the establishment;
 - d. in the case of a hotel or lodging-house, the number of rooms and a description of the services available to travellers;
 - e. in the case of a hotel or restaurant, the number of dining-rooms and the number of persons who can be served simultaneously in each;
 - f. the annual rental value of the establishment, authenticated by a certificate from the treasurer or secretary-treasurer of the municipality or, if

it is impossible to obtain such certificate, by any other means accepted by the minister;

- g. any other information required by regulation to define more precisely the nature and mode of operation of the establishment.

5. Application for the renewal of a permit must be made in the form and at the time determined by regulation.

6. Upon production of the report of inspection of an establishment and after verifying the information contained in the application, the minister, if the establishment meets the requirements of the laws and regulations, shall issue a permit on payment of the duties prescribed by the Lieutenant-Governor in Council.

For such purpose, the minister shall determine the number of rooms and the annual rental value of the establishment; he may also appoint a commissioner to fix such value.

7. The minister may refuse, suspend or cancel the permit in the case of a person found guilty of an infringement of this act or of the regulations or of any other act specified in the regulations.

8. No owner or keeper of a hotel, restaurant or camping ground shall, directly or through his agent or a third party:

- a. refuse to provide any person or class of persons with lodging, food or any other services offered to the public in the establishment, or
- b. exercise any discrimination to the detriment of any person or class of persons as regards lodging,

food or any other service offered to the public in the establishment, because of the race, belief, colour, nationality, ethnic origin or place of birth of such person or class of persons.

9. The owner or keeper of a hotel or their representatives may expel any person frequenting it or staying therein who is unable to justify his presence either as a customer or lodger in the hotel, or as having lawful business to transact with a customer or lodger of the hotel.

10. Notwithstanding any other provision of this act, any person may furnish a traveller, in consideration of payment, with lodging or food, or both, in a private house if such house is situated in a municipality where there is no hotel, restaurant or lodging-house, or if the restaurants or lodging-houses in the municipality are not provided with sufficient space and accommodation for all the travellers.

11. No person shall undertake the construction, enlargement, restoration or remodelling of an establishment contemplated in section 2, without having submitted to the minister the plans of such works and having obtained from him a certificate establishing that they are in conformity with the law and regulations.

12. The Lieutenant-Governor in Council may make regulations:

- a. to fix, with due regard for the value, nature or importance of the establishments and the place where

- they are located, the duties payable on the issue, renewal or transfer of a permit or when the site of an establishment is changed;
- b. to subdivide each class of establishments and define within such classes the subdivisions that are subject to the application of this act;
 - c. to ensure the protection of travellers and the cleanliness and proper maintenance of establishments;
 - d. to determine the method of registering travellers in hotels and lodging-houses;
 - e. to define the publicity to be given to the price of rooms and meals and forbid the charging of prices higher than those so published;
 - f. to prohibit or regulate the soliciting of travellers;
 - g. to establish standards respecting the construction, enlarging and repairing of establishments, the furnishing, maintenance, heating and lighting therof and the services they must make available to travellers;
 - h. to define what constitutes a tourist information office or a tourist guides' kiosk and regulate or prohibit the use therof with or without exceptions;
 - i. to regulate the form and the signing of applications for permits and of permits and order the posting up thereof.

Such regulations shall have force of law from the date of

their publication in the Quebec Official Gazette or such later date as is fixed therein.

13. Every person in charge of a hotel, camping ground, restaurant or lodging-house shall admit to his establishment, on demand, any inspector generally instructed by the minister to carry out such inspection.

14. Every person who operates a hotel, camping ground, restaurant or lodging-house without a permit in force under this act shall be guilty of an offence and liable, for each offence, to a fine equal to twice the amount prescribed for the permit.

Every person who, not being the holder of the required permit, by advertisement or otherwise leads the public to believe that he keeps a hotel, camping ground, restaurant or lodging-house, shall be guilty of an offence and liable to a fine of fifty to two hundred dollars.

Every person who commits any other offence against this act or the regulations shall be liable to a fine of twenty to one hundred dollars for each offence and, in the case of a subsequent offence within two years, to a fine of fifty to two hundred dollars.

15. Proceedings under this act shall be taken in accordance with the procedure prescribed by the Quebec Summary Convictions Act; part II of that act shall apply to such proceedings. No proceeding for infraction of section 8 shall be taken except with the written authorization of the minister.

16. Division II of the Quebec License Act (Revised Statutes, 1941, chapter 76) comprising sections 19 to 34, is repealed.

A license issued under the provisions repealed by this section shall remain in force until its date of expiry and shall be considered as a permit issued under this act.

The regulations made under the provisions repealed by this act shall remain in force until repealed or replaced under this act and shall entail the penalties provided by this act.

17. The Hotel Inspection Act (Revised Statutes, 1941, chapter 251), is repealed.

18. This act shall come into force on the date to be fixed by proclamation of the Lieutenant-Governor in Council, but the regulations therein provided for may be made and published previously.

APPENDIX "B"

Nom: R.S.Q. 1964 c. 142

Third Session, Twenty-Seventh Legislature, 13 Elizabeth II, 1964

Legislative Assembly of Quebec

BILL 67

An Act respecting discrimination in employment

As Passed By The Legislative Assembly, July 30th, 1964

Roch Lefebvre

Queen's Printer

Bill 67

An Act Respecting Discrimination In Employment

Her Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. In this act, unless the context otherwise requires, the following words mean:

- a. "discrimination": any distinction, exclusion or preference made on the basis of race, colour, sex, religion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; but any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination;
- b. "employer": anyone, (including Her Majesty,) who has a work done by an employee; but such word does not include:
 1. anyone who has fewer than five employees;
 2. any non-profit association or corporation operated exclusively for religious, philanthropic, educational, charitable or social objects, or primarily devoted to the welfare of a religious or ethnic group;

- c. "employee": a person who works for an employer and for remuneration, but the word does not include:
 - 1. a person employed as manager, superintendent, foreman or representative of the employer in his relations with his employees;
 - 2. a director or officer of a corporation;
 - 3. a domestic servant;
 - d. "association of employees": a group of employees incorporated as a professional syndicate, union, brotherhood or otherwise, having as its object the study, safeguarding and development of the economic, social and educational interests of its members and particularly the negotiation and application of collective labour agreements;
 - e. "employers' association": a group organization of employers having as its objects the study and safeguarding of the economic interests of its members and particularly assistance in the negotiation and application of collective labour agreements.
 - f. "Commission": the Minimum Wage Commission.
2. No employer, or person acting on behalf of an employer or employers' association shall resort to discrimination in hiring, promoting, laying-off or dismissing an employee or in the conditions of his employment.
3. No association of employees or employers' association shall

resort to discrimination in admitting, suspending or expelling a member.

4. No person, in connection with the hiring of an employee by an employer, shall publish any advertisement or display any notice or exhibit any symbol implying or suggesting discrimination, or require information respecting race, colour, religion, national extraction or social origin.

5. The Commission shall inquire into the written complaint duly signed by any person that he has been discriminated against contrary to this act, and endeavour to effect a settlement.

Failing settlement, the Commission, itself or through one of its members or a person appointed by it, may investigate any complaint with all the powers, immunities and privileges of commissioners appointed under the Public Inquiry Commission Act.

The Commission shall report to the Minister of Labour on every inquiry made under this section.

6. Every person who infringes this act shall be liable, on summary proceeding, to a fine of twenty-five to one hundred dollars or, in the case of an employers' association or an association of employees, to a fine of one hundred to one thousand dollars.

7. No prosecution for an offence under this act shall be instituted except with the written authorization of the Minister of Labour.

8. This act shall come into force on the 1st of September 1964.

APPENDIX "C"

Revised Statutes of Quebec

CHAPTER 301

Freedom of Worship Act

Division I

Freedom Of Worship

1. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, provided the same be not made an excuse for acts of licentiousness or a justification of practices inconsistent with the peace and safety of the Province, are by the constitution and laws of this Province allowed to all Her Majesty's subjects living within the same. R.S. 1941, c. 307, s. 2.

Freedom
of wor-
ship.

2. It does not constitute the free exercise or enjoyment of religious profession and worship

Interpre-
tion of
certain
acts.

(a) to distribute, in public places or from door to door, books, magazines, tracts, pamphlets, papers, documents, photographs or other publications containing abusive or insulting attacks against the practice of a religious profession or the religious beliefs of any portion of the population of the Province, or remarks of an abusive or insulting nature respecting the members or adherents of a religious profession; or

(b) to make, in speeches or lectures delivered in public places or transmitted to the public

by means of loud-speakers or other apparatus,
abusive or insulting attacks against the practice
of religious profession or the religious beliefs
of any portion of the population of the Province,
or remarks of an abusive or insulting nature
respecting the members or adherents of a religious
profession; or

(c) to broadcast or reproduce such attacks or
remarks by means of radio, television or the
press.

Every act mentioned in paragraph a, b or c is an
act endangering the public peace and good order in
this Province.

Dangerous
acts, etc.

Every act contemplated in paragraph a, b or c is
prohibited in this Province. R.S. 1941, c. 307, ss.
2a, 2b and 2c; 2-3 Eliz. II, c. 15, s. 1.

Prohibi-
tion.

APPENDIX "D"

Revised Statutes of Quebec 1964

CHAPTER 48

Press Act

1. For the purposes of this act, the word "newspaper" means every newspaper or periodical writing the publication whereof for sale and distribution is made at successive and determined periods, appearing on a fixed day or by irregular issues, but more than once a month and whose object is to give news, opinions, comments or advertisements. R.S. 1941, c. 337; s. 2.

"News-
paper".

2. Every person who deems himself injured by an article published in a newspaper and who wishes to claim damages must institute his action within the three months following the publication of such article, or within three months after his having had knowledge of such publication, provided, in the latter case, that the action be instituted within one year from the publication of the article complained of. R.S. 1941, c. 337, s. 3.

Delay to
sue.

3. No such action may be brought against the proprietor of the newspaper, unless, personally or through his attorney, the party who deems himself injured gives a previous notice thereof of three days, not being holidays, at the office of the newspaper or at the domicile of the proprietor, so as to allow such newspaper to rectify or retract the article complained of. R.S. 1941, c. 337, s. 4.

Notice
before
action.

4. If the newspaper fully retracts and establishes good faith, in its issue published on the day

Retrac-
tion.

following the receipt of such notice or on the day next after such day, only actual and real damages may be claimed. R.S. 1941, c. 337, s. 5.

5. Such retraction must be published by the newspaper gratis and in as conspicuous a place in the newspaper as the article complained of. R.S. 1941, c. 337, s. 6.

Publica-
tion.

6. Whenever the newspaper is not a daily, the rectification must, at the choice of the party who deems himself injured, and at the newspaper's expense, be published in a newspaper of the judicial district or of a neighbouring judicial district, as well as in the next issue of the newspaper itself. R.S. 1941, c. 337, s. 7.

Paper not
a daily.

7. The newspaper shall also publish at its expense any reply which the party who deems himself injured may communicate to it, provided that same be ad rem, be not unreasonably long and be couched in fitting terms. R.S. 1941, c. 337, s. 8 (part).

Reply.

8. Whenever the party who deems himself injured has both obtained a retraction and exercised the right to reply, no prosecution may issue if the newspaper publishes such retraction and reply without further comment. R.S. 1941, c. 337, s. 8 (part).

No prose-
cution.

9. No newspaper may avail itself of the provisions of this act in the following cases:

(a) When the party who deems himself injured is accused by the newspaper of a criminal offence;

(b) When the article complained of refers to a candidate and was published within the three days prior to the nomination-day and up to the polling-day in a parliamentary or municipal election. R.S. 1941, c. 337, s. 9.

10. Provided that the facts be accurately reported and in good faith, the publication in a newspaper of the following is privileged:

(a) Reports of the proceedings of the Senate, the House of Commons, the Legislative Council and Legislative Assembly of Quebec and of their committees from which the public is not excluded;

(b) Any notice, bulletin or recommendation emanating from a government or municipal health service;

(c) Public notices given by the Government or by a person authorized by it respecting the solvency of certain companies or regarding the value of certain issues of bonds, shares or stock;

Exceptions:

Crime.

Election.

Privileged publications.

(d) Reports of the sittings of the courts provided they be not held in camera, and that the reports be accurate.

This provision shall not, however, affect or diminish the rights of the press under common law.
R.S. 1941, c. 337, s. 10.

Rights
safe-
guarded.

11. The judge may, during a suit for defamation against a newspaper, order the plaintiff to furnish security for costs, provided that the defendant himself furnishes security to satisfy the judgment. The amount of security in each instance shall be left to the sole discretion of the judge. R.S. 1941, c. 337, s. 11.

Security.

12. No newspaper may avail itself of the provisions of this act if the formalities required by the Newspaper Declaration Act (Chap. 49) have not been complied with. R.S. 1941, c. 337, s. 12.

Prior
formal-
ties.

13. Every judgment condemning a newspaper at fault must be published in the said newspaper, and at its expense, on the order of the court which rendered the judgment, under penalty of contempt of court. R.S. 1941, c. 337, s. 13.

Judgment
published.

APPENDIX "E"

(i)

TITRE I

Des Droits Civils

Des droits civils

1. Tout être humain possède la personnalité juridique.

Citoyen ou étranger, il a la pleine jouissance des droits civils, sous réserve des dispositions expresses de la loi.

2. Tout être humain a droit à la vie, à la sûreté et à la liberté de sa personne.

Il est aussi titulaire des autres libertés fondamentales, telles la liberté de conscience, la liberté d'opinion et d'expression, la liberté de réunion pacifique et la liberté d'association.

3. Toute personne en péril a droit au secours.

Nul ne peut, sans excuse raisonnable, refuser ou négliger de prêter secours à une personne en péril ou de lui procurer les soins immédiats nécessaires à la vie.

4. Toute personne a droit à la sauvegarde de sa dignité, de son honneur et de sa réputation.

5. Toute personne a droit au respect de sa vie privée.

6. Toute personne a droit à la jouissance paisible et à la libre disposition de ses biens, sauf dans les cas expressément prévus par la loi.

7. La demeure est inviolable.

Nul ne peut pénétrer chez autrui sans son consentement exprès ou tacite, ou sans y être autorisé par la loi.

8. Toute personne a droit d'accès aux lieux ouverts au public et droit d'obtenir les services et les biens que l'on y offre, sans égard à des distinctions telles la race, le sexe, l'ascendance, les croyances ou opinions, sous réserve des dispositions expresses de la loi.

Toute disposition d'un contrat, testament ou autre acte juridique relative à la jouissance ou à l'aliénation d'un bien quelconque, et comportant une telle distinction, est contraire à l'ordre public et réputée non écrite; toutefois, n'est pas contraire à l'ordre public la distinction justifiée par son caractère charitable ou philanthropique.

9. Nul ne peut renoncer à la jouissance de ses droits civils et de ses libertés fondamentales, ne s'en interdire l'exercice dans une mesure contraire à la loi, à l'ordre public et aux bonnes moeurs.
10. Toute atteinte illicite aux droits civils et aux libertés fondamentales donne à celui qui la subit le droit d'en obtenir la cessation et la réparation de préjudice moral ou matériel qui en résulte.

APPENDIX "E"

(ii)

CIVIL CODE REVISION OFFICE

REPORT

of the

CIVIL RIGHTS COMMITTEE

Montréal

1966

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INTRODUCTION

In proposing the inclusion in the Code of a declaration of civil rights, the Committee wished to bring together the fundamental principles which accord a central position to the individual in private law. It is true that the codifiers in 1866 wrote some of these principles into their work, but they are scattered¹ and constitute so brief a statement that the courts have been obliged to develop the principles through recourse to the general rules of civil responsibility and the provisions of the Code relating to public order and good morals.

This work of elaboration by the courts is today sufficiently advanced for it to be possible, and indeed necessary, to codify anew this whole field of the law, especially since several provisions of the first title of the Book on Persons, dealing with the enjoyment and loss of civil rights, have fallen into disuse, whereas others require greater development or at the very least a re-formulation. Moreover, the Committee did not hesitate, where appropriate, to round out the existing law when it appeared necessary that legislative action fill in the gaps left by the jurisprudence or settle its uncertainties and bring the law into closer harmony with contemporary preoccupations. The aim is, on the one hand, to establish in the Code certain rights of the individual in a sufficiently precise way so that courts and jurists may apply them to factual situations and, on the other hand, to give them an educative value by stating them clearly and concisely.

Indeed, Quebec cannot stand aside from the vast movement for the extension and protection of human rights which characterizes the present times. In particular, the civil law must recognize in the individual all those rights which reflect the increasingly liberal idea of the place of man in society. Infringements of the fundamental rights and freedoms of individuals, which occurred for several decades on all continents and especially during the course of the Second World War, have provoked a salutary reaction, of which the 1948 Universal Declaration of Human Rights constitutes the principal milestone.² This Declaration is not a treaty and, of course, from a strictly legal point of view, states are not bound by it; nonetheless, its influence has been and remains immense.

Many countries have included in their constitutions charters of the rights of citizens which bind their domestic courts. In addition, a common civilization has made it possible for the member-states of the Council of Europe to create, through the Treaty of Rome signed in 1950, supra-national institutions empowered to arbitrate and, in certain cases, to settle disputes between individuals and their own governments in the realm of human rights. Finally, the United Nations itself has been working for several years on the drawing up of Pacts guaranteeing human rights, the aim of which is to impose on States very precise rules of conduct.

Canada has wanted to be associated with these developments, even though its federal structure complicates the implementation of international standards. In 1960, the Canadian Bill of Rights was passed which proclaims the right of the individual to

life, liberty, security of the person and enjoyment of property, as well as the freedoms of religion, speech, assembly and association, and of the press.³ However, it was carefully specified in the Act itself that these provisions "shall be construed as extending only to matters coming within the legislative authority of the Parliament of Canada". It is for provincial legislatures to adopt the laws necessary for the protection of those human rights which come within their competence, notably civil rights; they can likewise legislate within their sphere of authority when the sanction of a right falls under both federal and provincial jurisdictions, as is the case with the fundamental freedoms.

The Quebec civil law has a long tradition of protection of individual rights. This tradition has developed through an interpretation of the principles of civil responsibility and of the action in damages so that it is now realized the Civil Code provided an instrument of protection the full importance and efficacy of which has perhaps not been appreciated. The Legislature has in recent times given its attention to the more specific problems raised by racial and other forms of discrimination. Two important laws have been adopted prohibiting discrimination based on grounds of race, religion or ethnic origin in hotels and restaurants as well as in employment.⁴ Following the example of several foreign civil codes which give a special place to rights of personality,⁵ the Committee proposes that the Quebec Legislature proceed with the work already undertaken by codifying and completing the human rights coming within the civil

law - that is to say, the law dealing with relationships between individuals.

Here, admittedly, only one aspect of human rights is involved. It was the desire of the Committee to remain within the civilian tradition, and it was felt inopportune to incorporate in the Code rules which primarily concern the relationships between the individual and the state or which fall within public law, such as the citizen's political rights. Despite the limits imposed by the discipline and techniques of the civil law, however, it was thought that the protection of the rights and freedoms of the person would be considerably strengthened by the inclusion in the Code of a special title devoted to civil rights. It is important to note, therefore, that the draft submitted by the Committee cannot take the place of a complete charter of human rights, especially as regards political, social and economic rights.

Finally, the Committee wishes to point out that the word "person", found in most of the proposed articles, refers primarily to human beings. It is evident that bodies corporate enjoy certain rights guaranteed in this draft but it seemed advisable to avoid involvement in the special rules relating to them.

FIRST PART

DRAFT MODIFYING

THE CIVIL CODE RELATING

TO CIVIL RIGHTS

Text

1 Every human being possesses juridical personality.

Whether citizen or alien, he has the full enjoyment of civil rights except as otherwise expressly provided by law.

Explanatory Notes**Article 1:**

Most civil codes and jurists recognize that every person is endowing with juridical personality, which belongs to him by reason of his very existence, and which comprises a number of fundamental rights or inherent attributes intended to protect his physical and moral individuality. If, however, one attempts to define precisely the nature of these rights of personality, or even to draw up a list of them, great theoretical difficulties are encountered. There are as many definitions and lists as there are schools of thought, and the Committee did not think it advisable to provoke controversy on the subject by accepting one definition rather than another. It suffices to note that all civilized countries recognize the right of every individual to the enjoyment of juridical personality: the Committee believes that this fundamental principle, already implicit in Quebec law, should be given formal consecration in the very first article of the Code.

Our law has traditionally distinguished between British subjects and aliens⁶ but, in the opinion of the Committee, there

no longer exists today any reason for continuing this distinction, at least so far as the enjoyment of civil rights is concerned. Moreover, the general tendency of civilized states is to move in this direction.⁷

The equality of the citizen and the alien is, however, subject to some exceptions, for the laws of most countries deny aliens certain rights and privileges which are granted only to their own nationals. The Quebec Legislature likewise restricts to citizens the exercise of certain professions.⁸ The Committee has taken these exceptions into account by providing that the principle of equality affirmed in this article is subject to express provisions of law.

Text

2 Everyone has a right to life, to physical security and to personal freedom.

He is also endowed with the other fundamental freedoms, such as freedom of conscience, freedom of opinion and expression, freedom of peaceful assembly and freedom of association.

Explanatory Notes

Article 2:

The first paragraph of this draft article sets forth the fundamental rights of personality. The right to life, to physical security and to personal freedom are already protected

by Quebec law: the courts have based themselves on articles 1053 and 1056 of the Civil Code to sanction their infringement. The Committee wishes to emphasize that the expression "physical security" must be understood in the widest sense to include protection of the mental and psychological integrity of the human person.

The second paragraph is devoted to fundamental freedoms, often referred to by French civilians as "libertés morales". In Canada, these freedoms are of British origin, but they have traditionally found protection in the civil law as well. Moreover, judicial decisions bring out the complementary role of the federal and provincial jurisdictions in the protection of fundamental freedoms. In many instances the most effective recourse against a governmental body, a public officer or a private individual who infringes the liberties of another remains the civil action in damages. The decisions of the courts provide numerous examples. Because fundamental freedoms are protected by the private law, the Committee considers it necessary to place them, as does the French doctrine, among the most important of civil rights.

Text

3 Everyone in peril has a right to assistance.

No one may, without reasonable excuse, refuse or neglect to give help to anyone in peril or to provide him with the aid required to save his life.

Explanatory Notes

Article 3:

The obligation imposed by this article is a corollary of the preceding article. It is difficult to determine to what extent this principle is recognized by the civil law at the present time, for there appears to be no jurisprudence on the point. The Committee is of the opinion, however, that a person who, without reasonable excuse, refuses or neglects to give help to a person in peril commits a fault and renders himself liable. This obligation is already recognized in a limited way in the Highway Code,⁹ and the Committee considers it advisable to render it general in scope.

With respect to the interpretation of the expression "without reasonable excuse", the Committee deems it advisable to leave to the courts its application in the particular circumstances of each case.

Text

4 Everyone has a right to the protection of his dignity, his honour and his reputation.

Explanatory Note

Article 4:

In proposing this article, the Committee has no

intention of creating new causes of action. The decisions of the Courts usually mention honour and reputation, but they also contain the idea of the protection of human dignity.

The distinction between dignity, honour and reputation cannot always easily be drawn. For example, wrongs such as the infliction of humiliating treatment in the absence of witnesses may be committed which do not, strictly speaking damage a person's honour or reputation, but which do, nevertheless, injure his dignity. The Committee considers it necessary to use these three expressions in order to give full effect to the principles already inherent in the jurisprudence.

Text

5 Everyone has a right to privacy.

Explanatory Note

Article 5:

This expression, found in Article 12 of the Universal Declaration of Human Rights, has begun to be applied in Quebec jurisprudence.

Since the right to privacy is threatened to a greater extent today than it was in the past, the Committee deems it advisable that it be given general expression.

Text

6 Everyone has a right to the peaceful enjoyment and the free disposition of his property, save as expressly provided by law.

Explanatory Note

Article 6:

The peaceful enjoyment and free disposal of property are corollaries of the ownership and possession already protected by the Code, but in the estimation of the Committee their importance to the individual justifies that they be placed in this chapter devoted to civil rights.

These principles are not, however, without some exceptions, for the Legislature has restricted them more than once. The Committee considers, nonetheless, that any such restriction must be expressly provided for in the law.

Text

7 A man's home is inviolable.

No one may enter upon property lawfully occupied by another without his express or implied consent or unless authorized by law.

Explanatory Note

Article 7:

This article covers not only the case where the fact of entering upon the property of another, without authorization, causes damage, but also that in which an individual enters a dwelling without having caused any physical damage. In the Committee's opinion, there should exist, as maintained by some Quebec judges, a recourse for reparation of the moral injury caused by such intrusion.

The Committee chose the expression "upon property lawfully occupied by another" in the second paragraph because it is intended to include not only the domicile or residence of a person, but also his land, together with any building and its appurtenances of which he is owner, tenant or possessor.

Text

8 Everyone has the right, subject to express provision of law, to enter any place open to the public and to obtain whatever goods and services are available there, without regard to such distinctions as race, sex, social origin or convictions.

Any provision containing such a distinction in a contract, will, or other juridical act respecting the enjoyment or alienation of property is contrary to public order and taken as not written; however, distinctions justified by their charitable or philanthropic character are not contrary to public order.

Explanatory Note

Article 8:

The Quebec Legislature for a number of years has enacted laws to put an end to distinctions of race, sex, religion, national extraction or social origin, at least insofar as hotel-keeping and employment are concerned. There is no legislation, however, prohibiting discrimination generally or filling the gaps in a jurisprudence that has remained too tolerant in the case of owners of establishments open to the public. Moreover, the practice of inserting racial clauses in contracts remains frequent. The principle of freedom of trade, for example, has been so extended as to enable theatre owners to refuse an orchestra seat to a person for reasons of race.

The proposed article does not, in principle, prohibit all kinds of discrimination. The Committee considers that it cannot have recourse to those penal and administrative techniques that are additional means of carrying on the struggle against discrimination. It therefore submits an article prohibiting it in the areas where civil law techniques may properly be applied.

The article only mentions certain discriminations; the draft adopted by the Committee indicates that the list is not limitative.

In the first paragraph, the Committee uses the expression "place open to the public", which designates all places, even though they be privately owned, where the public is invited to enter. Examples include theatres, taverns, restaurants

and stores. This paragraph is, of course, proposed under reserve of the laws and regulations which prohibit access to certain places to various categories of people because of age, for example.

The Committee wishes to make it clear that a person who enters a place open to the public has also the right to the services and the goods available in such place. Jurisprudence a quarter of a century old makes each proprietor the sole judge of the reasons for refusing to serve a customer. The Committee is of the opinion that this rule must be changed and therefore proposes new law on this point.

It is to be observed that it is not the aim of the second paragraph to cover all possible cases of discrimination in juridical acts; for example, the lease and hire of services is covered by special legislation requiring administrative machinery.

Finally, the Committee is of the view that in the second paragraph an exception should be made in favour of distinctions justified by their charitable or philanthropic character. For example, a clause in a will by which an immoveable is bequeathed for the purpose of providing education to persons belonging to a particular religion would not be null.

Text

9 No one may renounce the enjoyment of civil rights and fundamental freedoms, nor forego the free exercise thereof in a manner contrary to law, public order or good morals.

Explanatory Note**Article 9:**

This article makes clear that the civil rights and fundamental freedoms defined in the preceding articles cannot be objects of commerce. The Committee drew this article in part from several foreign codes, but it desires to emphasize that the principle is already established in certain provisions of the Quebec Code, such as articles 13 and 1667.

It goes without saying that certain contracts, such as the lease and hire of services, involve a surrendering of freedom for a limited period of time; anyone is likewise free to donate his blood for some other person's benefit even though this act affects the donor's physical integrity. These examples suffice to show the importance of the judicial role in the appreciation of the facts and in the determination of the limits beyond which the contracting parties may not go without violating the law, public order and good morals.

Text

10 Anyone who suffers an unlawful interference with his civil rights or fundamental freedoms may demand an injunction and the reparation of all resulting damage, moral or material.

Explanatory Note

Article 10:

The civil rights and fundamental freedoms envisaged in this chapter are already protected to a great extent by the general principles of civil responsibility. The right to obtain the cessation of a wrong is also recognized by the courts by means of injunctions and habeas corpus proceedings, etc., and the courts often order that a wrong cease by proceedings other than these, for example in cases of abuse of rights and libel.

In view of their great importance, the Committee is of the opinion that the protection of these fundamental rights should be fully established in the present chapter by providing in all cases for a recourse to injunction and for the reparation of all damages, moral as well as material.

Footnotes

- 1 See for instance 407 and 985.
- 2 See also the Charter of the United Nations, article 13, and the Genocide Convention (1948).
- 3 An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms (1960) 8-9 Eliz. II, c. 44.
- 4 Hotels Act, R.S.Q. 1964, c. 205, s. 8; Employment Discrimination Act, R.S.Q. 1964, c. 142.
- 5 See, for example, the Austrian Civil Code (1810), articles 16, 17, 19, 1329 and 1330; the German Civil Code (1900), articles 823, 824, 826 and 847; the Swiss Civil Code (1912), articles 11, 12, 27 and 28; the Egyptian Civil Code (1948), articles 48 to 51; the Ethiopian Civil Code (1960), articles 8 to 32. See also the draft French Civil Code (1953).
- 6 Civil Code, articles 18 to 27.
- 7 Thus article 35 of the 1953 draft French Civil Code provides that "the alien enjoys in France the same rights as nationals except for political rights and those expressly withheld by law" (our translation).
- 8 See, for example, the Bar Act, R.S.Q. 1964, c. 247, s. 75; the Medical Act, R.S.Q. 1964, c. 249, ss. 30, 46 and 47; the Pharmacy Act, R.S.Q. 1964, c. 255, s. 8, sub-section 2 (a); the Agronomists Act, R.S.Q. 1964, c. 260, s. 25; the Dental Act, R.S.Q. 1964, c. 253, s. 64. The Federal Parliament likewise restricts the ownership of Canadian ships and radio stations to British subjects or citizens: The Canada Shipping Act, R.S.C. 1952, c. 29, s. 6; the Broadcasting Act, 1958, 7 Eliz. II, c. 22, s. 14.
- 9 R.S.Q. 1964, c. 231, s. 61, providing that the driver of an automobile involved in an accident shall remain at the scene and render all reasonable assistance.

SECOND PART

DRAFT MODIFYING CERTAIN TEXTS

OF THE CIVIL CODE

AND PROVINCIAL STATUTES

RELATING TO CIVIL RIGHTS

The Committee recommends that on the adoption by the Legislature of the chapter devoted to civil rights, various changes be made to the Civil Code and to those Statutes of the Province the present provisions of which would conflict with the new legislation.

1. Changes in the Civil Code

Articles 18 to 25:

To be repealed completely by reason of the adoption of the chapter devoted to civil rights.

Article 26:

To be repealed, the capacity of the alien to serve as a juror being governed by section 2 of the Jury Act, R.S.Q. 1964, c. 26.

Article 30:

To be repealed completely by reason of the abolition of civil degradation for the purposes of the civil law.

Article 835:

To be amended by reason of the abolition of civil degradation, by the repeal of that part of the text which follows the semi-colon.

Article 844, par. 2:

To be amended by reason of the abolition of civil degradation by the removal of the words "to civil degradation nor".

Article 986:

To be amended by reason of the abolition of civil degradation, by the removal, at the end of the article, of the words "Persons who are affected by civil degradation".

Article 1208, par. 3:

To be amended, by reason of the abolition of civil death, by the removal of the words "not civilly dead, and not deemed infamous by law".

2: Amendments to the Act to abolish
civil death (1906) 6 Ed. VII,
c. 38.

Since the Act abolishing civil death (1906) created civil degradation for those condemned to death or to perpetual personal punishment, persons conditionally released remain in a state of interdiction; section 7 of the Act, in effect, only makes exceptions in cases of pardon, and the remission of the penalty or its commutation.

The Committee considers that the very notion of civil degradation is irreconcilable with its concept of individual rights and with the spirit in which this chapter is drafted. It

is not an aim of the civil law to inflict punishment nor to make itself the auxiliary, as it were, of penal law. Consequently, the Committee believes that civil degradation, a vestige of the past, ought to be abolished. It is recommended that incapacity to exercise political or public rights be confined to special statutes such as the Election Act or the Jury Act.

Systems 3, 4, 5, 6, 7, and 8:

To be repealed by reason of the abolition of civil degradation.

Proposals

For

An Ontario Cultural and Educational Exchange Programme

And

An Ontario-Quebec Cultural and Educational Exchange Agreement

by Professor T.H.B. Symons

Spring, 1965

At its meeting on 30 April, 1965, the Ontario Advisory Committee on Confederation, in its consideration of ways to foster increased mutual understanding and respect between French and English-speaking Canadians, discussed the possibility of some positive action being taken by the Province of Ontario, perhaps in part through the Province of Ontario Council for the Arts, to promote cultural and educational exchanges between French and English-speaking groups both within Ontario and between Ontario and Quebec. President Symons of Trent University, with the help of a research assistant, was asked to serve as a sub-committee to study this proposal and to report upon it.

The sub-committee corresponded with and consulted numerous people, seeking their views and suggestions. It also gathered and examined a considerable collection of reports, speeches, and other informative material relating to its study. (See Appendix I).

The sub-committee now begs leave to report as follows:

I The Need For A Cultural And Educational Exchange Programme

There is an acute need for more and better communication between French and English-speaking Canadians, and there is widespread agreement that a great deal could be done to achieve this improved communication through a programme of cultural and educational exchanges sponsored by the Province of Ontario. Such a programme, embracing the whole range of the performing and creative arts and many areas of education, would help to open up the means for a fuller dialogue between the two cultures both within Ontario and between Ontario and Quebec.

A full and lively exchange programme sponsored by the Province of Ontario would generate between French and English-speaking citizens an increased understanding and appreciation of each other's cultures. It is to be hoped, too, that it would lead to the development of some joint cultural and educational activities and projects, and to a gradual expansion of the existing community of cultural interests which the two groups have in common. It should make a significant contribution to creating an awareness amongst Canadians of the great opportunities afforded to them for a shared, though diverse, cultural experience which might well be envied by other, unilingual countries.

The long-term results of increased contact between the French and English-speaking communities by means of a cultural and educational exchange programme could be of the utmost importance. There is much to be gained by both groups from such a programme, and there is a nation to be lost if we fail

to explore every means possible of improving the understanding and respect between Canada's French and English-speaking peoples.

Nevertheless, while a cultural and educational exchange programme of this kind may well contribute to better political relationships within Confederation, it should not and perhaps cannot be justified on these political grounds alone, important though they are. The main and imperative justification for an Ontario-sponsored programme is that it will widen our knowledge of ourselves and of each other.

II Ontario's Opportunity And Obligation

In the present time of difficulties for the Canadian Confederation, Ontario has a unique opportunity, and probably a special obligation, to serve the interests of national unity. This Province is equipped to make a particular and significant contribution to an improved understanding between French and English-speaking Canadians: by its geographical position as a neighbouring province to Quebec; by its size and population which, alone amongst the English-speaking provinces of Canada, are of the same order as those of Quebec; by its resources and wealth; by its large and growing French-speaking population; by its close and continuing historical relationship with Quebec; and perhaps by virtue of the special place which it occupies in the mind and thoughts of Quebec as the substantial partner in its marriage with English-speaking Canada.

An initiative from this Province to establish a

cultural and educational exchange programme both with Quebec and amongst its own French and English language communities would be a positive act showing Ontario's responsible interest in the problems - and opportunities - of bi-culturalism, and its sincere desire to contribute to their resolution.

While the idea of such an exchange programme is not new, the idea of an approach to it by Ontario at the government level is. The very fact of such an approach by Ontario could have a considerable impact in Quebec - an impact which would in itself make a contribution to the dialogue between French and English-speaking Canadians.

III The Scope For A Cultural And Educational Exchange Programme

An extensive and sustained cultural and educational exchange programme between Ontario and Quebec and between the two language groups within Ontario would provide a host of opportunities to bring French and English-speaking Canadians closer together and to build a greater understanding and appreciation between their two cultures.

Some of the possibilities of a cultural exchange programme in drama, music, the visual arts, literature, other arts, and the popular media, and of an educational exchange programme involving student and teacher exchanges at all levels and in almost every field, are suggested in Appendix II of this Report. However, these are intended only to illustrate something of the possible scope of the programme. It would, of

course, be one of the early and continuing functions of those responsible for administering the cultural and educational exchange programme to plan more specifically for these and other activities.

IV The Cultural Quadrilateral Of Ontario And Quebec

A cultural and educational exchange programme should certainly give recognition and careful consideration to the important role of the French and English-speaking minorities in Ontario and Quebec respectively. In effect, the two provinces now constitute a cultural quadrilateral, in which the large and growing French-speaking minority of Ontario and the large and long-established English-speaking minority in Quebec make up, with the English-speaking majority of Ontario and the French-speaking majority of Quebec, the four points of the compass. This quadrilateral offers natural opportunities for a valuable four-way exchange programme which should work within each of the two provinces as well as between them.

The scope within each province for cultural exchange activities between the French and English-speaking groups has as yet been little recognized. It provides an opportunity which should not be overlooked. Ontario has a responsibility to its own citizens to assist them to know themselves and their diverse culture better.

The development of an organized and sustained cultural and educational exchange programme between Ontario and Quebec could be so planned and arranged that it would help to foster improved relationships and an increasing cultural communication

between the two language groups within each province as well as between the two provinces. It should be possible for Ontario and Quebec to work with one another to advantage in conceiving and implementing a programme which would nourish education and the arts amongst their respective French and English-speaking minorities.

V Multi-Culturalism And The Exchange Programme

A programme of cultural exchanges should also reflect to an appropriate extent the multi-cultural character of Ontario's population. For example, and to mention but one or two illustrations of this point, some exchanges both within Ontario and between Ontario and Quebec might give particular attention to the music and folk-arts of the large Ukrainian community centred upon Sudbury, or to the culture of the large and long-established German community of southwestern Ontario. Special exhibits and events might well be included in the programme of exchanges with Quebec which would illustrate to that Province the important multi-cultural heritage of Ontario.

VI Government Participation In The Cultural And Educational Exchange Programme

Experience with the modest number of cultural and educational interchanges and tours which have taken place to date between Ontario and Quebec has made very clear the critical importance of proper preparation, organization and sponsorship. There have been several recent examples of visits to Ontario

by performers from Quebec, and vice versa, which were much less successful than they might have been, because of poor preparation, lack of organization, and inadequate publicity. This situation has often led to difficulties and misunderstandings which have occasionally outweighed the benefits of the visit.

Some substantial measure of government participation through an appropriate agency is needed to give performance and continuing sponsorship and support to any extensive cultural and educational exchange programme. Government participation should also be helpful in arousing public interest and confidence in the programme, and in establishing an acceptably high standard for its activities.

VII The Province of Ontario Council For the Arts

The Province of Ontario Council for the Arts, which was established in 1963 "to promote the study and enjoyment of and the production of works in the arts" including "theatre, literature, music, painting, sculpture, architecture or the graphic arts," and "any other similar creative or interpretative activity," has already made a notable contribution to the cultural life of the Province. Since its establishment, the Arts Council has developed a significant programme of encouragement and support for the arts within Ontario, and the nucleus of a capable staff and administrative organization to conduct its activities.

The cultural aspects of the proposed cultural and educational exchange programme both with Quebec and between the diverse cultural groups within Ontario would relate closely and

naturally to the purposes and programme of the Ontario Arts Council and might perhaps be conducted under its auspices. To this end, the scope of the Ontario Arts Council might be broadened to embrace, in addition to its responsibility for the promotion of the arts in Ontario, a wider concept of service to national unity through an improved knowledge and understanding of the bi-cultural and multi-cultural heritage of our province and country. This could be achieved by extending the activities of the Ontario Arts Council to include a programme of planned cultural exchanges which would bring artists and the arts from beyond the Province to the people of Ontario and provide opportunities to take Ontario arts and artists to people outside of the Province. Similarly, within Ontario, the Arts Council could sponsor a parallel and related programme of exchanges in the arts between the different cultural communities of the Province.

Such a programme need not inhibit in any way the present objectives of the Ontario Arts Council of service to the arts in Ontario, nor entail any lessening in the Council's concern for good artistic standards, and certainly should not be allowed to do so. On the contrary, it should enhance and strengthen the present programme of the Ontario Arts Council by bringing added and fresh support to it, and by helping to quicken and enrich the cultural life of Ontario and of the nation of which it forms a part.

Although some aspects of the proposed Ontario Cultural and Educational Exchange Programme might be placed naturally

under the aegis of the Ontario Arts Council, the Exchange Programme would require a Director, staff and budget of its own to plan and to implement its particular programme of activities. While the Exchange Programme could possibly be constituted as a section or division of the Ontario Arts Council, reporting to the Council and working under its general supervision and direction, it would on balance probably be better for the Ontario Cultural and Educational Exchange Programme to be established as a separate agency, working closely with the Ontario Arts Council, but reporting directly to the Minister or his Deputy.

A preliminary costing of some of the basic desirable activities of an Ontario Cultural and Educational Exchange Programme, and the experience of similar programmes elsewhere, indicates that a budget of the order, initially, of \$300,000 per annum would be required to establish the Programme on a solid footing.

The allocation of funds to the Ontario Cultural and Educational Exchange Programme should be quite separate from and in addition to the monies granted annually to the Ontario Arts Council for its present programme of support for the arts in Ontario. The development of the Exchange Programme should not impinge in any way upon the resources placed at the disposal of the Ontario Arts Council to finance its very worthwhile current activities.

VIII Privately Sponsored Cultural And Educational Exchanges

Cultural and educational exchanges and related projects by private bodies such as municipalities, business corporations, schools, universities, libraries, clubs, and service organizations, and interested private citizens should be encouraged. There is already a considerable amount of private interest and activity in this field which might be fostered and assisted by the example, the administrative machinery, and the financial help of an official provincial programme. The formal organization of a provincial programme could be helpful in many ways in forwarding the independent exchange activities organized by private agencies. The experience and information which would be acquired by those engaged full-time in the provincial programme could often be of assistance to independent activities, as would be the facilities and connections developed by the government programme.

The important role of privately arranged cultural and educational exchange activities needs to be stressed, and this role should not be reduced and, indeed, should be enlarged by the establishment of a government programme. Often a very modest amount of financial help, council and encouragement, forthcoming from the Province, would make the difference to the success or failure of a privately arranged project.

There are a great many possibilities for a lively and widespread programme of privately sponsored cultural and educational activities. Several business firms are already sponsoring some activities of this sort and more might be

interested in doing so. This is also true of many clubs and voluntary service organizations. At the municipal level, the idea of twinning cities and towns in the two provinces offers manifold opportunities for exchanges and increased contact between the two cultures. These and other independent initiatives, supported by some assistance and leadership from the provincial government through its own programme, could make a most important contribution to provincial and national unity by promoting cultural and educational exchange activities, and also a greater citizen exchange, within the Ontario-Quebec cultural quadrilateral.

Indeed, it would be desirable to investigate the possibilities of a widespread programme of citizen exchange, reaching well beyond the strict definitions of an educational or cultural exchange programme, as soon as possible. Interested communities and individuals, and private organizations and corporations, might play a particularly valuable role in the development of a programme of citizen exchange.

IX Quebec Interest In An Ontario-Quebec Cultural And Educational Exchange Programme

Informal discussions with interested individuals and officials suggest that Quebec would be very interested in exploring with Ontario the possibilities of an inter-provincial cultural and educational exchange programme and in taking some steps along these lines to strengthen cultural ties with the other provinces and between French and English-speaking Canadians.

There is some feeling in Quebec that exchanges organized

at the federal level may sometimes be too cumbersome and remote, and that it would on occasion be preferable to make arrangements directly between interested provinces for these purposes. It may be, too, that initiatives in this field from the federal government are not likely at this time to produce an entirely favourable reaction in Quebec. They may, indeed, be regarded with suspicion in the light of the widespread concern in Quebec to preserve and assert the Province's autonomous position in its relationships with Ottawa and its constitutional authority in the field of education.

By contrast, however, there are indications that the Government and many interested citizens and groups in Quebec might react favourably and even enthusiastically to initiatives from other provinces to improve communications between French and English-speaking Canadians. Indeed, the Quebec Ministry of Cultural Affairs has already given evidence of its interest in such matters through the activities of its Extra-Territorial Service. In this situation an initiative by Ontario would be very natural and might be particularly welcomed and appreciated. There would in fact seem to be every reason to hope that the principle of a cultural and educational exchange programme between Ontario and Quebec would be entirely welcome and acceptable to the Province of Quebec.

X Procedure And Form For An Ontario-Quebec Cultural And Educational Exchange Agreement

It would be appropriate for the initial approach to the Quebec Government in regard to a cultural and educational

exchange agreement to be made at the highest level, and it is desirable that this official approach be made as soon as possible.

The implications of the form and procedure of an agreement between the two provinces for an exchange programme should receive careful study. A signed agreement in the form of an entente or cultural accord might provide a framework within which further discussion and specific negotiations could take place. This accord might:

- (a) constitute a broad agreement between Ontario and Quebec to initiate and work together upon a reciprocal programme of cultural and educational exchanges;
- (b) include specific provision for the establishment of a joint Ontario-Quebec Committee on which the bodies entrusted by each province with the responsibility for conducting its exchange programme would be represented. This joint committee could act as a consultative body, and serve as a sounding board for ideas and a clearing house for the various projects;
- (c) provide for the establishment, when and as appropriate, of a number of other joint working committees to deal with specific matters.

The signing of such an agreement or accord between the two provinces would lend weight and significance to the exchange programme and give to it an enhanced initial impact as

well as widespread publicity. This procedure has in general been followed by Quebec in recent cultural agreements with France and Louisiana and is one that may be preferred by that Province. It is possible that such an agreement would provide an example of interprovincial cultural co-operation that would encourage similar interest and activity in other provinces and amongst private organizations and citizens.

Possible alternatives to a signed accord would be an informal and unwritten agreement, or perhaps an exchange of letters, or of public statements, which would make clear the wish of the two provinces to seek increased co-operation and interchange in cultural and educational matters.

Once an agreement had been reached between the two governments, there would be great scope for consultation and co-operation between Ontario and Quebec in regard to cultural and educational exchange activities. A number of joint committees and of specific co-projects would no doubt emerge. However, it would be desirable for each province to conduct and maintain its own programme with its own budget and administration rather than to attempt to establish a single committee and a common purse for one overall operation which might become unwieldy and lead to unnecessary conflicts and difficulties.

XI Recommendations

With the foregoing information and considerations in mind, the sub-committee earnestly recommends:

1. That immediate consideration be given by the Province of

Ontario to the establishment of an extensive and sustained programme of cultural and educational exchanges, both between Ontario and Quebec and within Ontario between its French and English-speaking peoples. This programme should also reflect the multi-cultural character of the Province of Ontario;

2. That to this end provision should be made for the establishment of an Ontario Cultural and Educational Exchange Programme and for the appointment of a Director of this Programme who would report directly to the Minister or his Deputy;
3. That an approach should be made to the Province of Quebec as soon as possible, and at the highest level, to explore the possibilities of an agreement to establish a cultural and educational exchange programme between Ontario and Quebec;
4. That the possibility of similar cultural and educational exchange agreements with other provinces, or groups of provinces, be explored once the Ontario Cultural and Educational Exchange Programme has been established.

APPENDIX I

A. The sub-committee corresponded with and consulted numerous people, seeking their views and gathering suggestions and informative material in regard to a possible cultural exchange programme between Ontario and Quebec and between the cultural groups within Ontario. In addition to correspondence and informal discussions with a large number of people, the sub-committee arranged meetings with the following persons:

- M. Guy Beaulne, Director, Theatre Service,
Quebec Ministry of Cultural Affairs;
Mr. Paul Bennett, Director, Art Institute
of Ontario;
M. Gilles Bergeron, Assistant Deputy Minister,
Department of Education of Quebec;
M. Jean Boucher, Director, Canada Council;
Mr. Milton S. Carman, Executive Director,
Province of Ontario Council for the Arts;
M. Georges-Henri Dagneau, Director, Extra-
territorial Service, Quebec Ministry of
Cultural Affairs;
Hon. William G. Davis, Minister of Education
and Minister of University Affairs,
Province of Ontario;
Mr. Peter Dwyer, Assistant Director (Arts),
Canada Council;
Dr. Eugene A. Forsey, Director of Research,
Canadian Labour Congress; Member,
Ontario Advisory Committee on Confederation;
M. Guy Fregault, Deputy Minister of Cultural
Affairs, Province of Quebec;
Mr. Arthur Gelber, President, Canadian Conference
of the Arts; Member, Province of Ontario
Council for the Arts;
Father Andre Girouard, Faculty, University of
Sudbury;
Mr. Nicholas Goldschmidt, former Artistic
and Managing Director of the Vancouver
International Festival; Senior Performing
Art Project Officer, the Canadian Centennial
Commission;

M. Pierre de Grandpre, General Director,
Arts and Letters, Quebec Ministry of
Cultural Affairs;
Father Laurent Larouche, Faculty, University
of Sudbury;
M. Richard Leclercq, Faculty, University of
Sudbury;
Rev. Dr. Lucien Matte, President, University
of Sudbury; Member, Ontario Advisory
Committee on Confederation;
Mr. Eric McLean, Music Critic, Montreal Star;
Member, Montreal Arts Council; Member,
Province of Quebec Arts Council;
Mr. George Merten, Adviser for Community
Theatre, Music, and Puppetry, Community
Programmes Branch, Ontario Department of
Education;
M. Claude Morin, Deputy Minister of Federal-
Provincial Affairs, Province of Quebec;
Mr. J.A. Norman, Manager, Advertising and
Public Information Department, Sun Life
Assurance Company of Canada;
M. Claude Ryan, Director, Le Devoir, Montreal;
M. Roger Seguin, Member, Ontario Advisory
Committee on Confederation; past Member,
Province of Ontario Council for the Arts;
President, L'Association Canadienne-
Francaise d'Education d'Ontario;
Mr. Scott Symons, Curator, Sigmund Samuel
Canadiana Gallery, Royal Ontario Museum;
M. Arthur Tremblay, Deputy Minister of Education,
Province of Quebec;
Mr. Herbert Whittaker, Theatre Critic,
Toronto Globe and Mail;
Mr. Henry Wrong, Director, National Clearing
House, The Canadian Centennial Commission.

B. Reports, speeches, and other informative material were gathered from the following organizations and agencies:

Art Institute of Ontario
L'Association Canadienne-Francaise d'Education
d'Ontario
Banff Centre for Continuing Education
National Conference on the Problems
of Canadian Unity (June 22 to 24, 1964)
Board of Education for the City of Welland
Canada Council
Canadian Book Publishers' Council
Canadian Broadcasting Corporation
Canadian Centenary Commission

Canadian Centenary Council
Canadian Chamber of Commerce
Canadian Conference of the Arts
Canadian Institute of Chartered Accountants
Community Programmes Branch of the
Department of Education, Province of
Ontario
Department of French, University of Toronto
Le Devoir, Montreal
The Journal of Canadian Studies, Trent
University, Peterborough
Ministere de l'Education Nationale, France
Ministere de l'Education, Province de Quebec
Ministere des Affaires Culturelles,
Province de Quebec
Ministry of Education, Province of Ontario
National Theatre School
L'Office franco-allemand pour la Jeunesse
Province of Ontario Council for the Arts
Sigmund Samuel Canadiana Gallery,
Royal Ontario Museum
Societes Canadiennes-Francaises de la
Region Metropolitaine de Windsor
United Church of Canada
University of Sudbury
University of Toronto Press
Publications and material from the
Progressive Conservative, Liberal, and
New Democratic Parties of Ontario.

C. The sub-committee wishes to record its gratitude to
its Research Assistant, Mr. Modris Eksteins.

APPENDIX II

Some suggestions for consideration by the
Ontario Cultural and Educational Exchange Programme

Education:

- increased student and teacher exchanges at all levels of education and in almost every field;

Schools

- development of school library and language laboratory resources;

- increasing emphasis upon the French language and the spoken tongue in schools;

- increased recruitment of French teachers from the Province of Quebec;

- sponsorship of a special programme of Teaching Assistants, drawing recent graduates from Quebec universities to assist with French instruction in Ontario schools;

- tours and exhibits designed for the schools;

- tours of the schools by performing artists;

- special programmes planned within the schools, of linguistic and bi-cultural interest: for example, in art; music; debating; library; school magazine or paper; literary society activities; mock parliament; language and bi-cultural clubs;

Universities

- more emphasis on appropriate Canadian studies, including support for study and research in Canadian literature and the arts;
- support for the development of special French-Canadian collections in university libraries in Ontario;
- sponsorship of exchange visits between professors of French and English language universities;
- collaboration on teaching projects such as joint seminars on particular areas of literature, art, and history;
- collaboration on research projects between French and English language universities;
- sponsorship of a programme of Teaching Assistants, drawing recent graduates from French-language Quebec universities to assist with French instruction and Canadian Studies programmes at Ontario universities;
- appointment of French-speaking resident artists or research scholars to English language universities, and vice versa;
- award of a number of Ontario Graduate Scholarships to students from Quebec;
- establishment of a number of undergraduate scholarships for French-speaking students at English language universities and other appropriate educational institutions, and vice versa;
- encouragement of student travel to, and summer employment in, Quebec or a culturally different part of Ontario;

- encouragement of bilingual conferences on education and on the arts;
- support for publications by the universities relating to bi-culturalism;
- support for scholarly translation work within the universities;
- assistance with appropriate developments in university extension programmes and in university community education projects;
- support for the development of university summer programmes in the French language and French-Canadian culture and society;
- developments within the regular academic programmes of universities in regard to curriculum and language teaching;
- emphasis in cultural and extra-curricular activities: films, lectures, outings, exchanges, drama, art, music.

Drama:

- direct exchanges between professional theatre groups in Ontario and Quebec: for example, between Le Theatre du Nouveau Monde of Montreal and an Ontario theatre company which might arrange to exchange their productions for a week during or at the end of each season;
- encouragement of tours by theatre groups from each province in the other: for example, by groups such as Les Jeunes Comediens and the Crest Hour Company;
- visits by and exchanges between theatre groups of the universities and schools in the two provinces;

- arrangement of bi-cultural conferences and study groups in the technical and administrative aspects of theatre such as stage management, production, and theatrical design;

- student and teacher exchanges in drama;

- support for the further development of French-Canadian theatre groups in Ontario;

- encouragement of the writing and presentation of dramatic works about Ontario and by Ontario writers which could play an important role in interpreting the Province both to itself and to others;

- assistance toward the translation of some dramatic works into French or into English for presentation to audiences of the other language group;

- preparation of synopses for programme notes to accompany the presentation of dramatic works in their original tongue.

Music:

- assistance for the preparation and musical arrangement of a collection of Ontario songs and music for presentation before both French and English-speaking audiences;

- the preparation of a collection of French-Canadian songs for circulation in Ontario;

- commissioning of original musical works;

- invitations to outstanding performers to visit, or to represent, the Province of Ontario as guest artists;

- tours and exchanges of folk-singers and chansonniers;

- attention to the possibilities of recorded music; for example, assistance for the recording and distribution of the work of outstanding performing artists and groups in Ontario; and the circulation in Ontario of recordings of outstanding musical artists from Quebec.

- annual exchange between the Toronto and Montreal Symphony Orchestras;

- similar exchanges between the chamber groups and smaller symphony orchestras of the two provinces;

- tours by musical groups;

- tours and exchanges between choral groups; for example, the Toronto Festival Singers and the Mendelssohn Choir from Ontario.

Visual Arts:

- support to enable the Art Institute of Ontario to enlarge and extend its programme to include more exhibits from Quebec, and to arrange exhibits of the visual arts of Ontario for tour in Quebec;

- exchange of exhibits of painting and sculpture between public galleries in the two provinces;

- assistance to enable touring of exhibits throughout both provinces;

- arrangement of exhibits in provincial and municipal government buildings;

- arrangements for bilingual lecturers to accompany touring exhibits of the visual arts;

- exhibits of the folk-arts and crafts of Quebec in Ontario and of Ontario crafts in Quebec;
- exchange of art teachers and students; for example, between the Ontario College of Art and the Ecole des Beaux-Arts of Montreal.

Literature:

- assistance for the translation of appropriate works from English to French, and vice versa;
- assistance for the publication of appropriate works of bicultural interest and concern;
- encouragement of increased attention to the study of Canadian literature in schools and universities;
- support for research in Canadian literature in Ontario;
- tours and exchanges of literary speakers between the provinces and within Ontario; novelists, poets, playwrights, critics;
- sponsorship of conferences and literary study groups and workshops;
- commissioning works to portray and interpret the character and the history of the Province;
- exchanges between schools and universities of literary study groups and lecturers;
- support for the appointment of resident poets and writers from Quebec to Ontario universities from time to time;
- collaboration on literary projects of common

interest, of which the Dictionary of Canadian Biography/
Dictionnaire Biographique du Canada is an outstanding example;
- a joint literary competition in appropriate
categories sponsored by the two provinces.

Some Other Arts and Related Fields:

- exchanges, tours, conferences, involving opera and ballet;
- a wider introduction of such French-Canadian song and dance companies as Les Feux Follets to Ontario audiences;
- exchanges, tours, conferences, speakers, involving the smaller ethnic minorities and displaying something of their rich cultural heritages in diverse branches of the arts;
- touring of Quebec's famous puppetry artists in Ontario and of Ontario puppetry theatre artists and groups in Quebec;
- exchanges and tours in the field of children's entertainment;
- exchanges, tours, and joint projects in cinema; wider circulation of French-language films in Ontario; appropriate assistance for the native film industry and for the preparation of some specific films of particular provincial or bi-cultural interest;
- museums: exchanges and tours of exhibits and special collections; exchanges and conferences of administrative and curatorial staff members.

Press, Radio, and Television:

- extend and improve the resources for popular commentary upon bi-cultural matters;
- support for study exchanges between French- and English-speaking reporting and editorial staff both between the two provinces and within Ontario;
 - arrangements and support for Ontario writers and radio and television commentators to make periodic or regular reports on developments and activities in the arts, education, and public affairs in Quebec.
 - the diffusion of general information about the exchange programme and the stimulation of public interest and participation in it;
 - the presentation of specific events in the exchange programme;
 - advertising and reporting specific events in the exchange programme;
- provision of more and better information in Ontario via these media about education and the state of the arts and cultural affairs in both Ontario and Quebec, and the diffusion of more information of general bi-cultural interest.

Report on an Ontario Position in
Federal-Provincial Financial Relations

by the Economic and Fiscal Sub-Committee
of the
Ontario Advisory Committee on Confederation

April 24, 1966

Report on an Ontario Position in
Federal-Provincial Financial Relations

Historical Development

Since 1947, federal-provincial financial relations have been conducted within the framework of five-year fiscal agreements. Normally, these agreements have been arrived at after a series of meetings between officials followed by formal decisions being taken at federal-provincial conferences of premiers and prime ministers. At these conferences, the various provinces state their basic positions on such matters as tax sharing and equalization payments, and at the end of the conference the Federal Government comes forth with a formula for the next five years which would purportedly take into account some of the positions of individual provinces.

In 1955, with the establishment of the Continuing Committee on Federal-Provincial Fiscal and Economic Relations, a mechanism for permanent consultation among senior civil service officials came into being. This Committee was responsible for much of the background work prior to the 1957 agreement and the 1962 agreement. The latest agreement, which was to run from April 1, 1962, to March 31, 1967, was fundamentally altered in 1963 during its term to provide for a different equalization formula and a higher proportion

of revenue from succession duties to the provinces. The annual increment in percentage of personal income tax revenue accruing to the provinces was also raised after the commencement of the last agreement.

Following this change in the form of the 1962-67 federal-provincial agreement, the Federal Government proposed the establishment of the Tax Structure Committee which would be charged with a fundamental review of the bases for the fiscal relationships between the two levels of government and, more particularly, to develop the framework of a new five-year agreement to cover the period 1967 to 1972. The Tax Structure Committee was expected to make a careful study of the recommendations and research reports of the Federal Royal Commission on Taxation and the various committees and commissions established by several of the provincial governments to look into provincial tax structures. The Committee was asked to include in its general review a larger range of topics than had previously been discussed in the Continuing Committee or embodied in previous tax-sharing agreements. Such wider subjects included the future of cost-sharing programs and the mechanism known as opting out, and the establishment of permanent liaison machinery which might be used to co-ordinate the fiscal policies of federal and provincial governments. The Tax Structure Committee was asked to make its final report to the federal-provincial conference of premiers and prime ministers in 1966 so that

final agreement could be reached, budgets prepared and legislation passed prior to the coming into effect of a new agreement on April 1, 1967.

CURRENT STATUS

The Tax Structure Committee had its first meeting in the autumn of 1964 and asked the Continuing Committee on Fiscal and Economic Matters, with an expanded membership as governments thought appropriate, to act as its research and secretariat body. This meeting in the autumn of 1964 established a suggested timetable of study and made some rough allocations of responsibilities among the governments for the undertaking of particular studies.

During 1965, the Continuing Committee and the Tax Structure Committee devoted most of their time to the preparation of projections of expenditure and revenue of the various governments, on the basis of agreed assumptions of economic conditions. These were completed in the autumn and presented formally to the Tax Structure Committee in December. They showed a very large and growing deficit appearing for each of the provinces at existing tax rates and a growing but smaller proportionate deficit for the Federal Government.

Meanwhile, various provinces have made strong statements about the requirements for greater revenue sources in order to meet their constitutional responsibilities. At

one extreme, the Federal Government could insist that the provinces find their own income. More reasonably, three broad alternatives are available:

- i. shared-cost programs;
- ii. block grants;
- iii. greater taxing capacity in various fields.

The problem for Ontario is to suggest the devices, or mixture of devices, which will retain effective federal economic and fiscal capacity and at the same time provide more adequately for provincial requirements.

The second stage in the work of the Tax Structure Committee was to have been an intensive study of the reports of the various commissions and committees on taxation. This was to have been done during the summer and autumn of 1965 on the assumption that these reports would be available by the summer of 1965. By the end of 1965, commissions had reported in New Brunswick, Saskatchewan, Manitoba, and Quebec, with the Federal Royal Commission not expected to report until May, 1966, and the Smith Committee on Taxation in Ontario not expected to report until September, 1966. The appropriate Federal Government civil servants have been given, on a confidential basis, copies of research reports and draft chapters of the Carter Commission report, but it is probable that Ontario civil servants will not be in a position to receive much in the way of recommendations of the Smith Committee for several months.

The Continuing Committee on Fiscal and Economic Matters has been obliged to begin its discussion of the substantive issues of tax sharing, equalization formulae, and the future of cost-sharing programs without the benefit of the tax committee studies. The Institute of Intergovernmental Relations at Queen's University has been requested to make a study of the matter of intergovernmental liaison machinery and will not be reporting until the summer of 1967, thus postponing final decisions in this area.

In the field of equalization, the Federal Government has prepared two background reports setting out the main principles which have to be dealt with in discussing equalization formulae and studying in some detail two alternative methods of arriving at formulae - the tax indicator approach¹ and the total income approach². Individual provinces are expected to prepare their own papers in this area and also to apply these alternative approaches to their own positions.

On tax sharing little has been discussed yet, since any definite proposals will have to be tied in very closely with royal commission discussions. Each individual government is expected to develop its own proposals.

On the future of cost-sharing programs, informal discussions have been held with Federal Government officials and several alternative approaches have been sounded out. The Federal Government's position on medicare is indicative of a new type of approach. In general, it involves leaving

the choice of acceptance to a province, with the understanding that, at the end of a fixed period following the implementation of the shared-cost program (3 years is suggested), the province will become fully responsible and will be given the equivalent of its former federal grant by way of tax abatement or an unconditional grant. Further details are given in Appendix 1.

These three basic areas where decisions have to be taken in the Tax Structure Committee - tax sharing, equalization payments and shared-cost programs - will be discussed in more detail later. At this point, it should only be emphasized that, unless there is a delay in the coming into effect of the new five-year agreement, the work of the civil service groups will have to be finished by early summer and final decisions taken by the Tax Structure Committee in the autumn of the present year.

The Approach To A Policy

The Balance of this report is devoted to developing an approach that might be followed by Ontario in the forthcoming negotiations. The various major issues and objectives have been viewed as being both economic and non-economic. The main concern of this report, however, is to give some indication of the nature of the solution that would result from following purely economic considerations, and an appreciation that

economic costs are incurred when other objectives are pursued. It is not the intention to imply that the non-economic objectives are of a lower order of importance; only that their realization does in some instances involve an economic cost.

Non-economic Objectives

Even a short list of some of the more familiar objectives of Canadian confederation will indicate that many of these are non-economic in character. Perhaps that of primary importance is the establishment and maintenance of national independence. A second is recognition of the special social and cultural aspirations of French Canada. Others include the creation of conditions of relative stability of population among the regions, relative equality of at least minimum standards of service between provinces, a rough concept of equitable treatment among the provinces in the redistribution of national income, and a strong feeling in favour of all governments as far as possible having independent revenue sources and independent spheres of responsibility. Other objectives that are primarily non-economic will occur to the Advisory Committee, many of them representing basic purposes in the Canadian concept of nationhood.

Economic Objectives

Some of the original economic objectives are as

valid today as in 1867; in particular, the creation of a common market in British North America by the removal of inter-provincial trade barriers, the adoption of a uniform national tariff, and the creation of new internal means of transportation are still active ingredients of government policy. In latter-day economic parlance, however, the new objectives are likely to be stated in terms of "Economic stability" and "economic growth".

"Economic stability", in layman's language, is most easily translated as the maintenance of reasonably full utilization of all existing capacity to produce without creating inflationary price increases. In terms of unemployment, it implies the attainment of an Ontario rate of perhaps 2% and national average rate of 3% to 4%; in terms of prices, it implies a rise of 1 1/2% to 2% per annum. Stability is thought to be best achieved by a high aggregate demand for currently produced goods and services, fostered by monetary and fiscal policies and in particular, where necessary, by elimination of fiscal drag (the surplus that most tax structures would produce if the economy were operating at full potential).

"Economic growth" involves the longer range objective of achieving an increased ability to produce - i.e., a rising per capita output of goods and services. It involves not simply maintaining economic activity at the existing potential, but of increasing the potential itself. This basically means making the economy more efficient and productive in all its

aspects by improving the productivity of resources through research, education, training, capital investment, etc., and the use of all these resources in the most productive way. It is generally felt that the greater the degree of mobility of labour, capital and goods within the country the greater is the likelihood that they will find their maximum potential usefulness - i.e., will make their greatest contribution to economic growth.

Conflicts Between Objectives

It will be fully apparent that conflicts exist between the non-economic objectives and the economic goals of stability and growth. The maintenance of minimum standards of services in all areas of Canada may contribute to an immobility of population that is contrary to growth objectives; the achievement of higher standards of education, training and mobility of labour may result in the virtual depopulation of less advanced regions of the economy; the redistribution of income from the wealthier to the poorer provinces may disperse capital from regions where it could most productively be invested, at a permanent cost in lost economic growth for the whole country; the decentralization of fiscal authority from the national government in response to demands for greater provincial fiscal autonomy may weaken the fiscal instruments to the point where it is no longer of use as a national economic support.

These and other conflicts are the inescapable price of a federal system of government. Because the Canadian federation is as much a political and social body as an economic one, all these requirements must be met as best they can in a compromise solution. The economist makes his main contribution in pointing out that there is an economic cost in attempting to satisfy the broader range of objectives.

Specific Demonstrations Of The Compromise Of Objectives

(1) Economic Efficiency vs. Equity Through Redistribution

It would aid greatly in evaluating the economic cost in the present arrangement if adequate figures were available by which to measure the extent to which the interregional pattern of private capital flows within the economy is offset by flows of government funds. Unfortunately, the data are very tentative and no great reliance can be placed on them. However, simply to demonstrate in quantitative terms the commonly accepted view that the federal system of finance disperses funds away from the growth areas which attract private capital, an attempt has been made to compare two sets of figures in Appendix 2. The first gives an indication of net private capital flows into or out of each Canadian province, and the second the net balance of federal revenues and expenditures for each province. The figures in Appendix 3 may (or may not) reflect the consequence of these flows.

The figures show the not very surprising result that the two streams of funds are in opposite directions. Unfortunately, they are not capable of supporting any further conclusions than this fairly self-evident one. It cannot be said that the flow of private capital funds necessarily identifies economic growth areas, or that the flow of government funds is without an economic rationalization. The results are of interest mainly as evidence of the sort of comparison that would be necessary if meaningful measurements of the economic cost of federal financial measures are ever to be assessed.

(2) Fiscal Autonomy vs. Centralized Fiscal Authority

Over the past three decades, as the result of the depression, World War II, and economic policies followed since 1946 by the federal government, there has been considerable centralization of revenue and expenditure from the municipal level to the provincial and federal levels. At the provincial level, the centralization has been fairly well balanced as between revenue and expenditure on own account. At the federal level, the centralization has produced the result that revenue has far exceeded expenditure on own account. The centralization of revenue on own account at the federal level (compared to expenditures) has been matched by the fact that the municipalities have suffered a greater relative decline in revenue than in expenditure on own account. These trends led by 1964 to the situation described in the following paragraph:

In 1964, the federal government had a surplus of \$1,582 million on its own account while the municipalities had a deficit of \$1,750 million, and the provinces on their own account had a surplus of \$148 million. The federal government transferred \$1,198 million to the provinces, and the provinces transferred \$1,261 million to the municipalities. After these and some other net transfers, the municipalities ended up with a deficit of \$452 million, while the provincial surplus was reduced to \$104 million and the federal to \$328 million.³ These data are put in clearer perspective in Table I to III. Furthermore, Table I provides a measure of the relative importance of intergovernmental transfers.

Table I

Government Revenue and Transfer Payments, National Accounts Basis, 1964

(Millions of Dollars)

| | <u>Federal Government</u> | <u>Provincial Governments</u> | <u>Municipal Governments</u> |
|--|-------------------------------|-----------------------------------|----------------------------------|
| <u>Own Account Revenues:</u> | | | |
| Direct Taxes - Persons | 2,558 | 816 | 33 |
| Direct Taxes - Corporations | 1,482 | 507 | - |
| Withholding Taxes | 140 | - | - |
| Indirect Taxes | 2,847 | 1,944 | 1,857 |
| Investment Income | 547 | 621 | 351 |
| Contributions to Social Insurance and government pension funds | 558 | 298 | 36 |
| | <u>8,132</u> | <u>4,186</u> | <u>2,277</u> |
| | <u> </u> | <u> </u> | <u> </u> |
| <u>Transfers:</u> | | | |
| From Federal Government | - | 1,198* | 56 |
| From Provincial Governments | - | - | 1,261 |
| From Municipal Governments | - | 19 | - |
| Total Revenue, including transfers | <u>8,132</u> | <u>5,403</u> | <u>3,594</u> |
| | <u> </u> | <u> </u> | <u> </u> |
| Federal Transfers as % of Total Revenue | - | 22.2 | 1.6 |
| Provincial Transfers as % of Total Revenue | - | - | 35.1 |

* See Table III

Source: Canada, D.B.S., National Accounts, Income and
Expenditure, 1964.

Table II

Government Revenue, Expenditure and Intergovernmental Transfers, 1964
 (Millions of Dollars)

| | Federal Government | Provincial Governments | Municipal Governments |
|---------------------------------------|-----------------------|---------------------------|--------------------------|
| Total Own Account Revenue | 8,132 | 4,186 | 2,277 |
| Total Own Account Expenditure | <u>6,550</u> | <u>4,038</u> | <u>4,027</u> |
| Surplus, Deficit on Own Account | + 1,582 | + 148 | - 1,750 |
| | <u>=====</u> | <u>=====</u> | <u>=====</u> |
| Total Revenue, including transfers | 8,132 | 5,403 | 3,594 |
| Total Expenditure | <u>7,804</u> | <u>5,299</u> | <u>4,046</u> |
| Surplus, Deficit, after transfers | + 328 | + 104 | - 452 |
| | <u>=====</u> | <u>=====</u> | <u>=====</u> |

Table III

Federal Transfer Payments To The Provinces, 1964*

(Millions of Dollars)

| | |
|---|--------------|
| Old age and blind persons | 49 |
| Disabled person allowances | 23 |
| Statutory grants | 24 |
| Taxation agreement | 283 |
| Health grants | 53 |
| Trans-Canada highway | 57 |
| Hospital insurance and Diagnostic Services Act | 415 |
| Unemployment assistance | 114 |
| Technical and vocational training | 90 |
| Other | <u>90</u> |
| Total | 1,198 |
| | <u>=====</u> |

* Includes not only shared-cost contributions, but also transfers under the Taxation Agreements, and statutory grants. All of these have been calculated on a calendar year basis.

Our Basic Postulates

The following basic postulates have been made by the sub-committee in their consideration of specific fiscal arrangements for the future:

- 1) the continuing need for the retention of effective fiscal power by the federal government, in order that such powers be available to promote stability, growth and other national economic objectives;
- 2) increasingly close cooperation between the federal and provincial governments in fiscal and economic matters;
- 3) the allocation of sufficient tax revenues to the provinces to fulfil their constitutional obligations.

As a general overriding condition, we also assume that for the foreseeable future the greater pressure for revenues will be on the provinces and municipalities, and that if any surplus tax resources are available it will be at the level of the federal government.

The Basic Elements

The present system of federal-provincial financial relations embodies three main techniques:

- 1) tax sharing;
- 2) equalization grants; and
- 3) shared-cost programs and opting out.

We examine these three main elements in the following pages in the light of the basic postulates set forth above. Proposals are set forth in each area which are intended to suggest the general line of approach we would recommend for Ontario rather than to present a rigid or complete prescription for all eventualities. We realize that much of the final settlement of new arrangements will be a matter of negotiation.

1. Tax Sharing

At the present time, the Federal Government collects revenue in three direct tax fields which it shares with the provinces:

1. personal income;
2. corporate income; and
3. estates and inheritances.

Personal Income Tax

While Quebec collects its own personal income taxes, applying a different set of graduated rates of tax and exemptions, the Federal Government collects this tax for the remaining provinces. It abates to the provincial government an agreed proportion of its tax collected from each taxpayer residing in the province (24% in 1966), and collects any levy the province may

decide to impose above the agreed proportion. Manitoba and Saskatchewan have imposed levies above the standard abatement.

Corporate Income Tax

All provinces and the Federal Government have agreed on definitions regarding corporate taxable income. For determining the provincial distribution of taxable income, the major agreement is that:

- a) 50 per cent of a firm's taxable income will be distributed according to the provincial distribution of the firm's salaries and wages; and
- b) 50 per cent will be distributed according to the revenue from sales by the plants in the various provinces in which the firm has plants.

The Federal Government applies its own corporate tax rate and abates to the provinces a standard rate of 9 per cent on the taxable income, except that an additional 1 per cent abatement is given in Quebec in lieu of university grants. Ontario and Quebec collect their own taxes and impose a levy above the 9 per cent standard provincial rate, and Manitoba and Saskatchewan have levied an additional one per cent which the federal government collects for them.

Estates and Inheritance Taxes

Quebec, Ontario and British Columbia levy and themselves collect a succession duty as well as receive a 25 per cent share of the federal estates tax. The remaining provinces receive 75

per cent of the federal estates tax collected in their respective jurisdictions.

Provincial Sharing of Direct Taxes

As we have seen, the direct taxes now being shared are the personal income tax, the corporation income tax and the estate and inheritance taxes. The last is now to the extent of 75 per cent a provincial revenue source, the personal income tax to the extent of 24 per cent and the corporation income tax to the extent of about 18 per cent (9 over 50). Where "opting out" has taken place (Quebec) the personal income tax is now a provincial revenue source to the extent of 44 per cent.

Estate Tax

In considering the possibility of further sharing of these sources we suggest that it would probably be desirable to have the federal government retain even its existing small share of estate tax revenue in the interests of continuing the relatively uniform national system of death taxes in effect under the present arrangements. We therefore do not suggest further sharing of the estate tax.

Corporate Income Tax

In view of the fact that the corporation income tax is potentially a useful fiscal instrument for economic growth because of its influence on corporate capital investment programs, and

that economic growth should continue to be a major concern of the federal government, a substantial share of the tax should continue under federal control. However, a further transfer of revenue through some increase in the abatement would not materially detract from its value for this purpose in our view. There is no precise way of measuring the additional area that might be given the provinces without jeopardy to the economic value of the tax, but a share of one-quarter or even one-third would not be regarded as unreasonable.

Personal Income Tax

The personal income tax is recognized as having a special appeal for all governments under the circumstances of recent years. Because of the graduated rates and the continuous movement of taxpayers into higher brackets, revenue is elastic with respect to changes in personal income. It is, therefore, quite literally a "growth" tax, and the large federal share of this tax largely explains the relative centralization of tax revenue in Canada. Since provincial and municipal expenditures have been rising considerably faster than federal own-account expenditure, the provincial governments understandably believe they should have a larger share of this "growth" tax revenue.

It is generally agreed that the personal income tax is the most useful of the direct taxes for purposes of economic stabilization; and if a national tax system sufficiently strong to exert economic influence is to be retained a substantial share

of this tax must remain in federal hands. Again there is no precise way of determining what the limit of sharing should be, but the sub-committee is generally agreed that 50 per cent is a working maximum ratio. The sub-committee therefore recommends that abatement of personal income tax to the provinces not be allowed to reach much beyond 50 per cent.

Provincial Sharing of Consumption Taxes

At the present time the direct sharing of tax fields is limited to direct taxes through the mechanism of the abatement procedure.

Another field that is "shared", in the sense that both provincial and federal governments levy charges, is the consumption or sales tax area. The federal government now levies a general manufacturers tax of 11 per cent (reduced in the 1966 budget to 6 per cent for production equipment and machinery, and jigs and dies, etc.), and the provinces levy retail sales taxes of 4 per cent to 6 per cent.

In the view of the sub-committee there is no reason why sharing of tax sources should not extend to consumption taxes. The federal government could withdraw gradually from the sales tax areas, leaving room for increased provincial sales tax.

2. Equalization Payments

At the present time, the federal government makes payments

to the provinces for the purpose of equalizing provincial tax revenue from the three main direct taxes - personal and corporate incomes and estates. It does so by ensuring that per capita revenue from the three specified tax fields⁴ at standard rates in each province reaches the average of the top two provinces. The one reservation is that a province which has above-average per capita revenue from natural resources⁵ will have its equalization payment reduced by one-half that excess multiplied by the province's population.

At the present time, studies are being carried out to determine what changes in distribution and amounts of equalization grants would result from including additional tax fields, and the sub-committee reserves judgment on this matter until the results of the studies are known.

The sub-committee nevertheless recommends, in the knowledge that Ontario is effectively paymaster for such transfers, that the Ontario Government adopt a position that would tend to restrain the total amount of equalization payments. The three main matters that determine the amount and allocation on equalization grants are:

1. the choice of tax fields included in the formula, and in particular, for any tax chosen, the extent of the divergence in the per capita yield at standard rates, as among the individual provinces;
2. the level of the standard rates to be used; and
3. the average to which per capita yields are to be equalized.

The adjustment for natural resources revenue should be continued.

Fiscal Need Grants Rejected

It is sometimes suggested that the federal government should distribute unconditional grants among the provinces on the basis of fiscal need. Under this proposal fiscal need would be determined as the difference between tax capacity of the province and the revenue required to provide a national minimum standard of public service. The determination of how much each government would require in order to provide a national minimum standard of public services to its residents would be a difficult operational task, in view of the difficulty of answering such questions as what services all Canadians are entitled to receive, what services are more needed in some areas than others, what quantity and level of service should be assumed as the minimum, how such services would be costed on a national basis, and so on. There would also be the difficult problem of how these decisions would be made - i.e. by the federal government, by an independent body, or by joint consultation?

Even if one were able to measure the revenue required to provide the minimum level of services, one would encounter problems in determining fiscal needs. There is not only the question of what sources of revenue should be included in order to ascertain tax capacity, but also whether account should be taken of relative tax effort among the provinces. If relative tax effort were to be incorporated in the formula, the question

would arise as to whether municipal tax effort should be included. If not, then a province could raise its index of tax effort by taking over additional tax burdens from the municipalities.

This approach, while it has some logical appeal, is sufficiently complicated that the sub-committee has not favoured it as a working proposal. The whole matter would require a good deal more study than has been given it so far in Canada before any judgment could be made as to its feasibility.

Grants for Education Rejected

Another proposal that is frequently heard and which also has great logical appeal is that the federal government should make substantial grants to the provinces in aid of education. This is an attractive idea on two grounds - education is a very heavy item in provincial budgets and its encouragement is also directly related to fostering economic growth.

The sub-committee considered and rejected this proposal for the reason that education is a jealously guarded responsibility of provincial government and, particularly in Quebec, any substantial degree of financial support from the federal government, in the view of the sub-committee, would be wholly unacceptable.

3. Shared-Cost Programs and Opting Out

Shared-Cost Programs

Since World War II, shared-cost programs have proliferated into a vast and complex area of federal-provincial finance, involving

close to \$1 billion of federal transfers in a great variety of specific areas, most of them constitutionally under provincial jurisdiction. These programs are the result mainly of a desire for national minimum standards based on notions of equity and objectives for increased mobility of production factors. In the past, federal initiative and formulation of national objectives in such areas of provincial jurisdiction as were involved were not resisted by most provinces, Quebec being an exception. Relatively generous participation of the federal government was in most cases a sufficient inducement for the provinces, which were faced with rapidly growing expenditure responsibilities.

In recent years, the provinces have advanced increasing objections to this type of program on the following grounds:

1. administrative and budgetary rigidities;
2. distortion of provincial priorities;
3. the growth of federal government powers in areas of provincial responsibility.

While these objections are put forward, it is clear that for the poorer provinces the grants from the federal government are the only means by which new programs can be undertaken. In these provinces local tax revenues would be totally inadequate, no matter what the rates levied, to meet the cost of many of these programs. Furthermore, it is recognized by most provinces that shared-cost programs have made and are making a valuable contribution in establishing more uniform standards in important economic and social services.

The principal programs, and the federal expenditure under each in 1963-64, are as follows:

| | <u>\$ Million</u> |
|------------------------|-------------------|
| Agriculture | 6 |
| Health | 53 |
| Hospital Insurance | 391 |
| Welfare | 172 |
| Vocational Training | 137 |
| Highways | 52 |
| Resource Development | 17 |
| Civil Defence | 4 |
| Municipal Winter Works | 27 |
| Other | 1 |
| | 860 |

Source: Canadian Tax Foundation, The National Finances, 1965-66.

Opting Out

Under pressure from one province (Quebec) for the cessation of federal grants and the ceding of a "fiscal equivalent", the federal government has undertaken to allow the provinces to "opt out" of shared-cost programs. The essence of this arrangement is that, in return for an undertaking by the province to continue the program in question at its own expense at least during a transitional period, the federal government allows an increased abatement of its personal income tax to permit an increase in the provincial tax.

Under the opting out procedure, increases in abatements of personal income tax have been established for each of the main

"standing" Programs (e.g. Hospital insurance, 14%; welfare, 2%; unemployment assistance, 2%, etc.). A province which takes over a program increases its own tax by the amount of the abatement and in addition receives a grant to meet the remaining cost of continuing the program.

Quebec is the only province which so far has "opted out" of any programs. It is committed to continuing the specified programs along their original lines for interim periods extending at the farthest to the end of 1970. Under present opting out, the assistance in the form of equalized personal income tax abatements is still conditional and adjustments to the money thus collected guarantee that there will be no loss or gain relative to the participating provinces.

Views of Sub-Committee on Opting Out and Shared Cost

In considering a position to be taken by Ontario with regard to opting out, the sub-committee has been guided by the following considerations:

1. That the existing programs available for opting out would raise the provincial share of personal income tax to 44 per cent (as in Quebec); in short, even this degree of opting out would approach the limit of 50 per cent assumed as the tolerable maximum. As a practical matter therefore, opting out possibilities would be substantially exhausted, at least for the personal income tax, by the existing programs. This

- suggests either that opting out as a device has run its limit, or that other taxes, particularly the corporate income tax or the sales tax, would have to be brought into the opting-out arrangements.
2. That, in any event, opting out on the basis of a uniform national abatement of tax for each program will require the continuation of substantial additional payments to provinces where the standard national abatement would produce insufficient revenue to support the program. It is therefore only a partial answer - in some provinces making a very minor contribution - to the securing of sufficient revenue for the province.
3. That, in the long run, the continuing conditions of opting out are likely to become increasingly ill-defined. As a practical matter, there could neither be a perpetual undertaking by a province to carry on a program nor a perpetual undertaking by the federal government to allow a tax abatement.

With regard to shared-cost programs as a whole, the sub-committee has taken the following view:

1. that, in many instances, the programs have introduced new and beneficial government services throughout Canada, and the requirement of certain standards has helped to achieve a minimum level of such services;

2. that, as against this beneficial effect, the programs have had the disadvantage of undermining provincial financial autonomy and of establishing conditions of compliance which have tended to be too rigid and restrictive.

Recommendations on Shared-cost Programs and Opting Out

The sub-committee recommends:

1. that all existing shared-cost programs be reviewed to determine whether they should be continued or discontinued as government programs;
2. that, for those that are felt worthy of continuance, the conditions for qualification by a province be made much less rigid than at present. The grant might be designated for expenditure in, for example, the general area of welfare, with conditions governing actual welfare programs being much broader than in the past.

An exception would be made for the terms governing such programs as Trans-Canada Highways, ARDA and the Confederation Centennial, for which conditions should remain fairly specific.

3. Since the sub-committee is of the view that for existing programs the payment of grants must be continued for the poorer provinces, it has no strong reservations regarding continuation of payments as well for the wealthier provinces,

provided the conditions for eligibility are made less restrictive as recommended above.

4. The sub-committee's main concern regarding opting out is that, if pressed to its ultimate limits, this approach would probably require the federal government to offer for all existing and future shared programs the alternative of either a payment to the province or a further abatement of federal tax. This development could quickly carry the provincial share of personal income tax beyond 50 per cent (it may in fact be potentially beyond that point now with the addition of medicare to existing programs). The sub-committee has assumed that the maximum sharing should be 50 per cent of personal income tax or of the sales tax.

We would therefore recommend either that no further opting out alternatives be offered or that if further offers are made they involve abatement of the corporation income tax.

5. The sub-committee offers three further observations on opting out:

- a) opting out should be limited to programs where the terms of the program and the opting-out formula offer a meaningful choice to all provinces;
- b) the federal government should draw a strong

line against "opting out" of those programs such as family allowances and unemployment insurance which are under its own legal jurisdiction;

- c) if the conditions for opting out are so relaxed that the funds may be spent in broad areas of responsibility at the discretion of the province, Ontario should consider opting out.

The General Approach Recommended

The sub-committee has not sought to put forward a specific program involving a precise prescription for Ontario in the forthcoming negotiations. Rather it has attempted to list the various elements and the manner in which these elements might be used in a solution.

In general, the sub-committee favours a mixture of policies in which further direct transfers of tax sources from the federal government to the provinces are concentrated in the area of consumption taxes and/or corporation income tax. Further, that shared-cost programs be continued where feasible (for the near future the scope for further programs is considerably restricted by revenue possibilities), but that opting out not be permitted to increase the provincial share of the personal income tax beyond 50 per cent, and that the corporation income tax or sales tax also be brought into the opting-out

arrangements and be made available to all provinces. Equalization grants should be continued, but, subject to the results of the study now under way, should not be extended much beyond their present scope.

Appendix 1A Note on the Federal Government's Medicare Scheme

The Federal Medicare Scheme was the direct result of the recommendations of the Hall Royal Commission on Health Services, which reported in 1964 and 1965. The Commission suggested a comprehensive health services program to be administered by the provinces and financed to the extent of 50 per cent by the federal government from general revenues.

In July, 1965, the Prime Minister outlined the extent to which the federal government proposed to implement the recommendations of the Hall Commission. His proposal called for a federal contribution in support of provincial medicare programs that met with basic conditions (outlined below). The federal contribution, which would be available commencing in July, 1967, would amount to approximately one-half of the national per capita cost of a comprehensive program covering all physicians' services. The federal cost was estimated at \$14 per capita in 1967 for a total estimated cost of close to \$300 million. However, it has since been suggested that the per capita contribution would be somewhat higher than \$14.

The four basic conditions that a provincial plan would have to meet in order to qualify for the federal assistance are as follows:

Scope of Plan. The provincial plan should initially

cover as a minimum all services provided by physicians, both general practitioners and specialists. It was suggested that there is nothing in the federal proposal to prevent the provinces from providing additional benefits and that the federal government would consider at a later date the possibility of enlarging the services for which it contributes to include dental services, prescribed drugs and other important services.

Coverage. Provincial plans should be universal and include all residents of the province on uniform terms and conditions as far as is administratively practicable.

Administration. The plans should be publicly administered either by the provincial government or by a provincial government agency.

Transferability. The benefits under any provincial plan should be fully transferable for persons who are absent from their home province and for persons who move from one province to another.

Comparison with traditional shared-cost programs

The medicare approach provides a once-and-for-all impact on provincial spending priorities, while shared-cost programs involve annual liaison, accountability and federal involvement in the specific areas covered. Under medicare, the provinces would have total freedom after an initial, presumably 3-year, period without any further accountability to the federal government. Of course, the program would be

well entrenched and irreversible. The provinces would receive an unconditional grant or appropriate tax abatement in lieu of the original "conditional" medicare support.

Appendix 2Private and Public Flow of Funds Between Provinces

The following table indicates the provincial distribution of private investment funds by the Canadian capital market in 1964. By this indication, the most intensive capital investment is taking place in Alberta and B.C. and the general tendency is for intensiveness to decline as one goes eastward through the list of provinces. Ontario is somewhat below average, and the figures tend to rise westward of Ontario and decline eastward of Ontario.

Table I

Per Capita Investment in Business Plant
and Equipment by Province, 1964
(dollars)

| | | | |
|------------------|-----|----------------------|-----|
| Canada | 341 | | |
| Ontario | 327 | | |
| Other Canada | 349 | | |
| <u>Western</u> | | <u>Quebec</u> | 288 |
| British Columbia | 493 | <u>Maritimes</u> | |
| Alberta | 498 | New Brunswick | 261 |
| Saskatchewan | 475 | Nova Scotia | 190 |
| Manitoba | 335 | Prince Edward Island | 208 |
| Average Western | 461 | Newfoundland | 253 |
| | | Average Atlantic | 229 |

Federal government policy, however, appears to distribute public funds in a direction which tends to offset the private capital flows. For example, in 1965, the federal government distributed \$276 million in equalization payments among the provinces. Table 2 shows the per capita provincial distribution of the equalization payments. The highest per capita payments were in the Maritimes. British Columbia, Alberta and Ontario received no equalization payment. Saskatchewan, Manitoba and Quebec received descending amounts, however, which did accord with the direction of flow of private capital.

Table 2

Per Capita Distribution of Federal Equalization Grants¹ Among the Provinces, 1965.
(dollars)

| | | | |
|------------------|-------|----------------------|-------|
| All provinces | 14.14 | | |
| Ontario | - | | |
| Other provinces | 21.55 | | |
| <u>Western</u> | | <u>Quebec</u> | 23.08 |
| British Columbia | - | <u>Maritimes</u> | |
| Alberta | - | New Brunswick | 46.72 |
| Saskatchewan | 30.39 | Nova Scotia | 44.30 |
| Manitoba | 25.23 | Prince Edward Island | 54.68 |
| | | Newfoundland | 47.44 |

(1) Equalization grants attributable only to the three standard taxes: personal income tax, corporate income tax and estate tax, adjusted by natural resource revenues.

Table 3 shows the per capita provincial distribution of federal government expenditures, by type of expenditure. Table 4 shows the provincial distribution of federal revenue, expenditure and balance, in 1961-62. The basic source of these statistics is "Reply of the Minister of Finance to Question No. 741 by Mr. Balcer, Made Order for Return, July 22, 1964".

In per capita terms, the Maritimes received the largest amounts, then the western provinces, then Ontario, and lastly Quebec. Quebec received the least, particularly in federal transfer payments to persons and in federal expenditure for goods and services. Saskatchewan ranked unusually high largely owing to the expenditure on the Saskatchewan dam.

Table 4 indicates that in this particular year the federal government collected a surplus of \$388 million in Ontario and incurred a total deficit of \$1,287 million in the rest of Canada, with deficits in all areas outside Ontario.

Thus, in 1961-62 Ontario was the source of federal government funds transferred to other provinces. In some other years, particularly when the federal government was closer to an overall balance, some other provinces also were in surplus.

Table 3

Per Capita Distribution of Federal Government
Revenue and Expenditures, Fiscal Year 1961-62
(dollars)

| | <u>Federal transfer payments</u> | <u>Total revenue</u> | <u>Balance</u> |
|-----------------|----------------------------------|----------------------|----------------|
| | <u>to provinces</u> | <u>Expen.</u> | |
| <u>persons</u> | | | |
| All Canada | 109 | 46 | 348 |
| Territories | 104 | 74 | -49 |
| Provinces | 109 | 46 | -1,710 |
| Ontario | 103 | 31 | -56 |
| Other provinces | | | 62 |
| B.C. | 133 | 52 | |
| Alberta | 114 | 45 | |
| Sask. | 164 | 58 | |
| Man. | 134 | 49 | |
| Quebec | 89 | 45 | |
| N.B. | 122 | 80 | |
| N.S. | 122 | 73 | |
| P.E.I. | 140 | 100 | |
| Nfld. | 110 | 109 | |
| | | 298 | -353 |
| | | 519 | -320 |

Table 4

**Provincial Distribution of Federal Revenue
and Expenditure, 1961-62.**
 (thousands of dollars)

| | <u>Revenue</u> | <u>Expenditure</u> | <u>Balance</u> |
|-----------------|----------------|--------------------|----------------|
| All Canada | 6,346,996 | 7,246,142 | -899,146 |
| Territories | 13,027 | 76,300 | -63,273 |
| All provinces | 6,333,969 | 7,169,842 | -835,873 |
| Ontario | 2,621,247 | 2,233,521 | 387,726 |
| Other provinces | 3,712,722 | 4,936,321 | -1,223,599 |
| B.C. | 641,934 | 725,368 | -83,434 |
| Alberta | 461,776 | 555,065 | -93,289 |
| Sask. | 231,166 | 474,073 | -242,907 |
| Man. | 304,221 | 409,896 | -105,675 |
| Quebec | 1,651,327 | 1,805,540 | -154,213 |
| N.B. | 134,186 | 272,169 | -37,983 |
| N.S. | 175,423 | 352,586 | -77,163 |
| P.E.I. | 21,752 | 58,812 | -37,060 |
| Nfld. | 90,937 | 237,812 | -146,875 |

Appendix 3

Regional Changes in Population and Income,
1957 to 1964

Table 5 shows the regional changes in population and in per capita earned personal income from 1957 to 1964. The table indicates that there has been a narrowing of the gaps among the regions in this period. (This represents a shift from the long-term stability of regional differences referred to in the Second Annual Review of the Economic Council of Canada.) It also shows that one of the major sources of this narrowing of the gap was the shift in population.

In 1957, the low levels of per capita earned personal incomes were in the Atlantic provinces, Quebec and Manitoba-Saskatchewan. From 1957 to 1964 these regions had the highest percentage changes in per capita earned personal income. Furthermore, relative to the aggregate of all provinces, the Atlantic provinces lost population from 1957 to 1964, and the relative loss by 1964 amounted to 5.7 per cent of the population in the Atlantic provinces in 1957. For the Manitoba-Saskatchewan region, the relative loss amounted to 6.7 per cent of the 1957 population. Quebec, however, obtained a relative gain in population amounting to 0.9 per cent of its 1957 population.

Analysis of shifts in population and per capita incomes in the United States reveals similar narrowing of differentials and similar population mobility.

In order to equalize per capita personal incomes to the national average in 1964, it would have been necessary to reduce Ontario's personal income by 14.5 per cent (\$208 per capita). The growth in Ontario's aggregate output in current dollars over the period 1964 to 1984 is estimated at about 6.5 per cent per annum, providing a rise in personal income from \$13,996 million in 1964 to \$49,300 million. If the attempt were made to equalize per capita personal incomes by 1984 without population shifts, then Ontario's 1984 personal income figure would be \$42,150 million rather than \$49,300 million, for a loss of \$7,150 million, and a reduction of the growth rate to 5.6 per cent rather than 6.5 per cent over the period. However, this calculation must be qualified. Actually, the massive shift of jobs and incomes from high-productivity provinces such as Ontario and B.C. to low-productivity provinces would reduce the overall Canadian rate of growth. As a result Ontario's rate of growth would be even less than the 5.6 per cent. It would mean equalizing the distribution of a total pie that would be diminishing continually below its potential size.

This is the direction in which federal-provincial financial arrangements have been tending since 1957, and the direction in which federal policy has been moving in both its provincial distribution of revenue and expenditure and its development policies such as the designated area program.

Table 5

**Regional Changes in Population and Income,
1957 to 1964**

| | Per Capita Earned Personal Income | | | Population | | |
|-----------------|--------------------------------------|-------------------------------|-----------|------------------------|----------------|--|
| | % Change 1957-1964 | % of All- Province Average | | \$ change 1957-1964 | % 1957-1964 | Change Relative to All Provinces ('000) |
| | | % 1957 | % 1964 | | | |
| Atlantic | 30.3 | 62.4 | 64.5 | 10.6 | -93 | -5.2 |
| Quebec | 28.0 | 85.7 | 87.0 | 10.6 | 41 | 0.9 |
| Ontario | 23.5 | 122.2 | 119.7 | 16.9 | 61 | 1.1 |
| Man. & Sask. | 37.0 | 87.5 | 95.0 | 9.1 | -116 | -6.7 |
| Alberta | 21.9 | 102.1 | 98.7 | 23.0 | 84 | 7.2 |
| B.C. | 20.3 | 119.6 | 114.1 | 17.3 | 22 | 1.5 |
| Total provinces | 26.2 | 100.0 | 100.0 | 15.8 | - | - |

FOOTNOTES

- 1 The "tax indicator" approach measures the potential revenue yield available to each province from a composite tax system including income, asset, consumption and production taxes.

The potential provincial yield for each of these revenue sources is computed by applying the all-province average rate to a standard tax base, e.g., corporation taxable income, estate tax assessments and taxable retail sales.

Tax effort, or the extent to which a province is utilizing its potential revenues, is determined by comparing the actual yield against the potential yield for each revenue source.

- 2 The "total income" approach measures fiscal capacity in terms of the amount of income received or produced within a province. This method is based on the premise that, in the final analysis, all taxes are paid out of income.

Gross income received by individuals and corporations in a province is combined in order to arrive at an overall tax base. In addition, fiscal capacity in respect to natural resources is determined on the basis of the calculated value of natural resources production, rather than in terms of actual income received from sales.

- 3 Since these figures are based on the national accounts, they do not agree with government statements of budgetary surpluses or deficits.

- 4 For the purpose of equalization, the estates tax abatement is considered to be 50 per cent.

- 5 Revenue from natural resources, for these purposes, is calculated by taking 50 per cent of the average for the three preceding years.

